International Negotiation in China and India
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A Comparison of the Emerging Business Giants

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Preface

India and China are now emerging as major players in the global economy. China is already a member of the UN Security Council and the world’s second-largest economy. India is aspiring to be a member of the UN Security Council and with its economy growing rapidly, is expected to become the world’s third-largest economy in a few more decades. These countries have very different historical legacies, different cultural traditions, and different modes of engagement with the external world. Thus, as they seek to grow and develop, they do so from very different starting points and with different outcomes to date, although it is perhaps arguable that the gap is narrowing and may narrow more as India catches up with China. Modernization does not necessarily imply Westernization, as Japan often reminds us, and in a similar vein one may argue that the same holds true for India and China.

As India and China seek to regain their rightful place in the world, more and more foreign investors are attracted to these markets, both because of their size and also because they provide opportunities for outsourcing or offshoring work. A key task confronting foreign investors is to negotiate with host governments, local partners, customers, or suppliers. Negotiating is a challenging exercise even in the most benign of environments, and when environments are complex, as is often the case in India and China, the exercise becomes even more arduous and challenging. In this volume we have sought to highlight the key aspects of the institutional environments in India and China, and their potential impact on negotiating in these countries. India and China pose unique and distinct challenges, and foreign investors must be aware of the nuances of the environments and how best to navigate through them.

The volume looks at the institutional environment from the standpoint of regulatory, cognitive, and normative forces that significantly influence the negotiating dynamic in either country. We have sought to show how each of these forces can potentially affect the negotiation process in these countries. We have provided illustrative examples of negotiating cases in India and China, which highlight some of the salient aspects of negotiating dynamics in these countries. Relatedly, the volume analyzes which types of negotiating skills may be most relevant in India and China.
It is our belief that this book should be useful to both practitioners and academics alike as they seek to make sense of the very different institutional environments and how best to navigate through them. Practitioners are likely to get a good flavor of the dominant negotiating strategies in India and China, and the best way for foreign investors to negotiate with the Indians or Chinese. In China relationships remain the key to successful business negotiations, whereas in India, it is the ability to manage Indian expectations that may prove decisive to the success of a negotiation. Academics, on the other hand, may perhaps begin to recognize the importance of exploring and testing in a systematic comparative way the differences between the two countries and, in particular, the differences that might appear to be the most crucial in influencing negotiating success in these countries.

India and China are in the process of reshaping the economic geography of the world and it is our hope that this book will contribute to a deeper understanding of these emerging giants.

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Culture and Negotiating Practices: The Relevance of the Institutional Perspective

The advent of globalization has brought with it an increased emphasis on international business activity. Cross-border trading, joint ventures, strategic alliances, and/or partnerships with host country governments have become increasingly commonplace. As managers cross borders to negotiate and renegotiate transactions, they are confronted not only with cultural differences, but more broadly with institutional differences that may directly or indirectly affect the ease with which partners are able to create value jointly together. Consider, for example, the development of power projects in India. When India opened up to foreign investors in 1991 a number of foreign power producers sought to develop power projects in the country. The Indian government recognized the chronic shortage of power in the country and cleared the way for eight fast-track projects in the power sector. Of these eight projects, only one was eventually successful.¹ The most spectacular failure was no doubt Enron’s Dabhol project, in which the parties negotiated and renegotiated, but ultimately to no avail. The power plant was constructed but shut down by Enron in 2001 over a dispute with the Maharashtra State Electricity Board as to what the parties owed each other. It took another five years for the dispute to reach a satisfactory conclusion: the plant is now being run by two Indian firms. In the midst of all of this, Enron went bankrupt in 2001 and sold its stake to GE and Bechtel, which were Enron’s partners in the deal.²

Another salient dispute involves the Anglo-Australian mining company Rio Tinto and the Chinese government.³ The Chinese government initially accused employees of Rio Tinto of stealing state secrets when the company was engaged in negotiations with Chinese steel makers over the price of iron ore. The charges were subsequently reduced by the Chinese prosecutors to stealing trade, as opposed to state secrets.⁴ These allegations were levied in the context of yearly contractual negotiations.
that take place between the major suppliers of iron ore and the leading steel makers of the world. It has been maintained that it may be difficult to totally disentangle these negotiations from the failure of the Chinese state aluminum company, Chinalco’s, to acquire an 18 per cent stake in Rio Tinto.\textsuperscript{5} The employees have now been found guilty of accepting bribes from the Chinese steel makers and the company has fired them.\textsuperscript{6} The case has raised concerns in Australia with an Australian business group suggesting that this could negatively undermine the confidence of foreign investors in China.\textsuperscript{7}

These cases are suggestive of the difficulties that foreign investors might face when negotiating internationally. Consider, for example, the case of foreign power producers in India. Investors are confronted with cultural differences, differences in regulatory systems, and/or differences in established ways of doing things. Cultural differences refer to differences in values and beliefs, and these can have a powerful impact both on people’s assumptions, the way that they perceive things, and their behavior. Differences in regulatory systems refer to differences in the level of control that is exercised over foreign investors as well as the efficiency/effectiveness of the regulatory authorities. In each cultural context there also emerge established practices grounded in implicitly held assumptions that may further contribute to or aggravate the problem. Foreign power producers in India were confronted with differences on all of these levels and their inability to manage these differences effectively contributed to the negative outcomes. Culturally speaking, Indians tend to have very high expectations, and this no doubt complicates the task of finding an agreement that may be satisfactory to all.\textsuperscript{8} The Indian regulatory environment has traditionally not favored business activity\textsuperscript{9} and while this is no doubt changing, operating norms are still far from what foreign investors might expect, which no doubt aggravates the problem. Finally, India is characterized, as having a ‘poverty syndrome’ with the implication that Indians are very sensitive to the price that they are paying for the products that they buy.\textsuperscript{10} It also makes them tough bargainers, in that they will exert as much effort as possible effort to obtain an agreement that they consider to be fair. This may have been the final straw in the successful development of power projects, because under the terms of the negotiated contract with foreign developers the price of power would rise continuously as the latter had been guaranteed a rate of return fixed in US dollars and the Indian rupee was simultaneously depreciating against the dollar.\textsuperscript{11}

Scholars and practitioners have now begun to recognize the difficulties of negotiating across borders and over the years a whole body of
literature has emerged which documents the problems in negotiating effectively. Much of the discussion in this context has, however, focused on the implications of cultural differences that negotiators are confronted with as they cross national boundaries. No doubt, there are some salient cultural differences. In high-context cultures information is exchanged indirectly whereas in low-context cultures information exchange is rather direct. Some cultures value the development of a relationship as a prerequisite for successful negotiations whereas other cultures are much more task focused. In some cultures contractual rigidity is the norm whereas in others, contractual flexibility may be the operating norm. Some conceive of negotiation as a win-win game whereas others think of negotiation as a win-lose game.

The impact of culture is no doubt important, but as the experience of power developers in India indicates, there is often more than just culture at play in international negotiations. International negotiations are also likely to be profoundly influenced by differences in ideology, the nature of regulatory enforcement, and/or legal systems. In any specific international negotiation the salience of different variables (culture, legal system, ideology, or regulatory enforcement) may vary, and this no doubt makes generalizations difficult. The experience of power developers in India suggests that while culture may no doubt have played some role in shaping the negotiating dynamics, its impact may have been overshadowed by poverty syndrome and a regulatory system that could not effectively overcome the bureaucratic inertia.

We therefore wish to develop a more comprehensive framework for understanding cross-cultural negotiations. This perspective will highlight the relevance of an institutional lens for studying negotiations. We begin by sketching out some key aspects of institutional theory, which we then seek to apply in the Indian and the Chinese cases in the chapters to follow.

**Institutional theory: Key elements**

Firms operate in an environment that is composed of three main components, namely, the regulative, normative and cognitive components. The regulative component defines with some precision what a firm can or cannot do in a particular environment. For example, until the onset of liberalization in 1991, foreign firms operating in India were restricted to a maximum of 40 per cent equity holding in their venture in the country. The cultural cognitive component of the environment refers to taken-for-granted assumptions or the standard operating procedures that
govern how things are done. A foreign firm seeking to enter India will, for example, be held to a higher standard relative to its local counterpart. One possible reason for this is the fact that the Indian way of thinking has been profoundly shaped by the colonial experience. There is therefore an ever-present fear among Indians that they might be exploited by foreigners. The normative component of the environment refers to the underlying societal values and beliefs that condition how members of that country perceive the underlying reality. Indians, for example, are more sensitive to religious, as opposed to secular time. They also exhibit both an individualistic as well as a collectivistic mindset, which sets them apart from the Chinese (Sinha, 1997, pp. 304–34).

A key aspect of the institutional theory is the recognition that organizations must adapt to the institutional environment to survive. It follows that organizations entering new markets that are characterized by a different institutional environment must reorient their strategies to fit the new requirements. A key element of strategic adaptation is the negotiating strategies that they pursue and the means by which they seek to implement them as they negotiate new collaborative arrangements. Indeed, it could be argued that while the Indian institutional environment may have been a difficult one for foreign power developers, the latter made the problems worse for themselves by pursuing negotiating strategies that were not suited to the environment in which they were operating. A contract in which secrecy was of paramount concern during the negotiation process, and in which a guaranteed rate of return was provided to Enron was surely not consistent with the institutional environment within which the firm operated. It came to be perceived as a company that was solely focused on its own interests as opposed to the interests of India. In contrast to this, consider the case of InterGen in Mexico. InterGen sought to develop a 450 MW power project in Mexico. The project was awarded to the company in 1999 and was inaugurated by Mexico’s president in 2002. A noteworthy feature of this project was the additional and proactive steps taken by InterGen both to minimize the potential negative impact of this project on the local community as well as to contribute to sustainable development. As Kumar et al. (2005) note ‘An important component of the project has been the ancillary facilities and measures taken by InterGen to earn the trust of the surrounding communities and minimize adverse impacts, in combination with the power purchase contracts and other contracts that have anchored the basic elements of the project.’

The cultural or the normative dimension, which has been the focus of attention of much international negotiation research, constitutes
only one aspect of the institutional matrix. A lack of emphasis on the other two dimensions (regulative and the cultural-cognitive) implies that we get, at the very best, an incomplete picture of the negotiation process. For example, in institutional environments characterized by extensive regulation and/or inconsistency in the application of relevant regulations, negotiations may potentially entail extensive transaction costs, which in turn may deter the negotiators from even contemplating doing business there. Alternatively, they may need to contemplate projects where risk is minimal and/or where the political salience of the project may be low. The cultural-cognitive elements pertain to the standard operating procedures that have become dominant in an environment. Institutional variation in the ‘cultural-cognitive elements’ may also impede negotiations in a number of ways. For example, in some institutional environments, a contract does not have the same sanctity as it does in others. The expectation is that as the situation evolves, so will the contract adapt to reflect the new realities. This in turn, may cause grave difficulties if the negotiators from different institutional environments do not possess the same understanding.

**Key implications of the institutional theory for cross cultural negotiations**

Institutional theory enriches our understanding of cross-cultural negotiating processes in a number of different ways and we will now seek to elaborate upon these insight.

(a) *What is to be negotiated, is it contract or legitimacy?*

A commonplace assumption among negotiation scholars and practitioners is the idea that the endgame of negotiation is a contract. Yet, it is now recognized that in a cross-cultural context this is limiting and that we need, at the very least, to supplement contracts by relationship building.²³ The institutional perspective would suggest that while relationships may no doubt be useful both in arriving at a contract and in subsequent renegotiations, the endgame of negotiation is less the development of a relationship for its own sake, but more the attainment of legitimacy. Legitimacy has the implication that the transaction is viewed as being appropriate.

Appropriateness may refer to the perceived fairness of the contract and/or the transparency of the process by which it was awarded. It may also be indicative of the fact that a sincere attempt has been made to integrate the interests of the different stakeholders. This will no doubt positively influence the judgments made by the stakeholders about the
firm in question. No doubt, legitimacy is subjective, with such assessments varying on a continuum from low to high. That said, we would suggest that contracts that are considered as legitimate are more likely to be durable. Such contracts may also withstand any volatility, be it externally generated (changing market conditions) or internally generated (political instability).

A formal definition of legitimacy is offered by Suchman, who suggests that legitimacy is the ‘generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definition’ (Suchman, 1995, pp. 571–610).24

Legitimacy trumps a formal contract under conditions of high institutional distance for a number of reasons. First, a high institutional distance is likely to be associated with a heightened degree of ambiguity. This may pertain to the actor’s behavior, the nature of the external environment within which they are operating, the nature of the contractual obligations that are implied, and/or expected outcomes. For example, in environments where regulatory effectiveness is low or otherwise compromised by corruption, the existence of a formal contract does not amount to very much as such a contract may have been obtained by procedures of dubious legitimacy. Indeed, such a perception clouded the development of many power projects in India during the 1990s.

Secondly, in institutional environments, characterized by the perception that foreign investors are often exploitative, foreign investors are often held to a higher standard than their local counterparts25 and this makes the attainment of legitimacy even more critical. They must not only be doing the right thing, they must also be seen to be doing the right thing. Interpretative performance is crucial in this regard.26 The concept refers to the ability of a foreign investor to create and recreate shared meaning i.e. a joint and a shared construction of the purpose of the venture and the manner in which the project is to be executed. This often proved to be difficult for the foreign power producers in India because the institutional innovation that they brought in (for example, privately owned power plants) and the manner in which they pursued these projects (for example, reliance on debt as opposed to equity) diverged greatly with local practices. Heinz & Zelner (2005) suggest that when there is a high degree of divergence between an emergent institution (for example, privately owned power plants) and the ‘reference points’ (local norms) whose legitimacy is unquestioned, the political actors seek to overthrow or restructure the emergent institution.27 Perhaps this is the reason why seven out of the eight fast-tracked
projects in India went nowhere. It is also the case that in transactions characterized by uncertainty about outcomes and/or the distributional implications of the project, legitimacy is not only necessary but is also a valuable strategic asset. This will help shield the project against any criticisms that may be leveled against it either internally or externally.28

A good example of where the absence of legitimacy has heightened conflict is the dispute between Fusion Systems Corporation and Mitsubishi. Fusion Systems Corporation was a US-based company engaged in the manufacture of microwave lamps. Mitsubishi Electric was a US $19 billion company, which was involved in markets ranging from aerospace to consumer electronics (McQuade & Gomes-Cassares, 1993).29 The dispute revolved around the issue of which of the companies had developed the technology, with each company accusing the other of copying the other's technology. This dispute was intimately linked with differences in patent systems between the two countries.30 There were many differences in the patent systems but one of the most fundamental of these revolved around the difference between a system that stressed the importance of 'first to invent,' as was the case with the US system, and a system that highlighted the importance of 'first to file,' as was the case with the Japanese system. The case suggests that by 1983 Mitsubishi had filed 138 patent applications, whereas Fusion had only filed 20. Between 1983 and 1989 Fusion and Mitsubishi engaged in private negotiations to resolve the issue. At the same time, Fusion opposed Mitsubishi’s applications for patents in Japan, while also seeking help from the US government to resolve the matter. The parties entered into negotiations with very different starting points: Fusion offered not to oppose Mitsubishi’s patent filings in Japan if the company, by the same token, did not assert any of its patents against Fusion. Mitsubishi, by contrast, wanted Fusion to pay a hefty cash amount, royalties, and in addition wanted royalty-free access to Fusion’s technology. In 1987 Fusion asserted that it had entered into a verbal agreement with Mitsubishi. However, this verbal agreement went nowhere because the operating managers at Mitsubishi considered it to be unfair. As negotiations faltered, Fusion began to air its views in the United States and participated in a PBS ‘Frontline documentary’ about how Mitsubishi reacted negatively to this perceived escalation and hired a Washington lobbyist to counter Fusion’s efforts. In 1989 Mitsubishi Electric made an offer to Fusion asking for royalty payments of three per cent on all of Fusion’s Japanese sales to cover patents issued prior to 1987 coupled with a US $40,000 payment. Fusion turned this demand down and no negotiations took place until 1992. Mitsubishi now
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proposed reopening the negotiations and in 1992 it did so with a new president, Leslie Levine now at the helm at Fusion. Shortly thereafter the companies announced a settlement to their dispute. This protracted conflict highlights the role played by institutional differences in the emergence and development of the conflict. There was a clear difference in the regulatory system between the US and Japan regarding the issuance of patents and this clearly conditioned what each party considered to be legitimate action in this regard. As Don Spero (cited in McQuade & Gomes-Casseres, 1993) notes ‘the US system sets up a legal monopoly to give the inventor and the inventor’s company a chance to obtain some market advantage. The Japanese system is aimed at avoiding conflict and promoting cooperation which is part of the Japanese culture. In legal, patent terms that means cross license. So the entire system is set up very, very effectively to convince you and me if we are competing against each other to cross license.’

A contrasting example of a case where the negotiating partners made sincere and ultimately successful attempts to establish legitimacy is the case of the alliance between Renault and Nissan. The two companies represented very different national and corporate cultures and at the time they decided to initiate the alliance both their reputations had been negatively affected (Korine, Asakawa, & Gomez, 2002, pp. 41–59). Renault had just come out of a failed alliance with Volvo, while Nissan had been on the verge of bankruptcy. The companies had complementary objectives, with Renault hoping to expand its presence in North America and Asia, and Nissan hoping to find a savior from its current economic difficulties. Korine, Asakawa, and Gomez (2002) suggest the partners took a longer term view of the alliance that they were developing and as the partners went through the different stages of ‘conceiving, courting commitment, and closure’ they demonstrated boldness, consistency, and sincerity. As De Andria, a member, of Renault’s negotiating team noted (cited in Korine, et al., 2002, pp. 41–50) ‘Above all we tried – even if we didn’t manage it 100 percent – to avoid putting ourselves forward as the company making the acquisition, the side that comes out on top. We always wanted to have due regard for form, to have due considerations for the Japanese.’ This quote, and the decision by Renault not to take advantage of the situation when Daimler Chrysler dropped out of the bidding process, is further indicative of how keen Renault was to establish and maintain legitimacy.

As these cases illustrate the requirement of negotiating legitimacy necessitates that firms enter into cross-cultural negotiations with an altogether different mindset. Although being culturally sensitive is no
doubt, a key aspect in this process, it is far from the whole story. Foreign investors and the managers who are negotiating on their behalf must both understand and be sensitive to the environment in which they are operating. They must take a long-term view, and recognize that agreements that are arrived at solely on the basis of which party has the stronger bargaining power may not be sustainable over the longer term. They must also learn to appreciate the benefits of contractual flexibility as opposed to rigidity in such environments. Although, the firm that seeks to pursue legitimacy as an end goal may not necessarily gain from any one particular such transaction, it may be able to influence subtly, the mindset of the stakeholders and in doing so enhance their image and their bargaining power over the longer term.

(b) A better appreciation of the complexity of cross-cultural negotiations

An institutional lens also alerts us to the idea that cross-cultural negotiations are often complex. Complexity means that negotiators are confronted with the necessity of dealing with a large number of variables and the potential interaction between them. Culture will no doubt always be present but in addition to this there is the issue of task complexity, the number of players involved in the negotiation, the political salience, if any, of the negotiation at hand, and/or the experience of the negotiators in negotiating internationally. Some negotiations are no doubt more complex than others. The complexity depends on the magnitude of the transaction (negotiating a billion dollar deal, for example, is no doubt more challenging than negotiating a million dollar deal), the type of the transaction (a buyer-seller negotiation may be less complex than a negotiation involving a merger), and/or whether the negotiation requires the parties to grapple with complex technical issues.

The emerging complexity will, in turn, maximize ambiguity. Ambiguity can have many meanings in the international negotiation context. Thus it may imply that the negotiators are uncertain as to how their counterparts will respond to the negotiation strategy that they have chosen. It may also be the case that in ambiguous environments negotiators may not have a good idea as to what constitutes a good outcome. There may also be the implication that the negotiators remain uncertain as to what kind of tradeoffs to make and what kind of a negotiated agreement they could best sell to their domestic constituencies. Ambiguity thus renders the choice of an appropriate negotiation strategy somewhat problematical for international negotiators.

The idea that cross-cultural negotiations are complex has been recognized in the international negotiation literature\textsuperscript{35} but the linkage
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between complexity and an institutional perspective remains undeveloped. The recognition that cross-cultural negotiations are complex has a number of different implications. It suggests, first of all, that the outcomes of cross-cultural negotiation often remain unpredictable.\(^{36}\) This is not so surprising, given the number of variables at play and their potential interaction. Secondly, it suggests that in a complex negotiation, the notion of a win-win or an integrative agreement that has become the cornerstone of negotiation theory and practice (Walton & McKersie, 1965)\(^{37}\) may have only limited validity. This is so for a number of reasons. First, given the number of constraints that negotiators have to manage in a cross-cultural negotiation, it is not clear if this allows negotiators the scope or the leeway truly to craft an integrative agreement. Negotiators may have the primary goal of ‘satisfying’ rather than ‘optimizing.’ This clearly dampens their ability to move towards the integrative end of the continuum. It is also unclear whether any agreement that the parties have arrived at will be able to stand the test of time. While this proposition may no doubt be true of many negotiations, a complex negotiation is likely to experience a greater sense of pressure or tension, given the delicate nature of the agreement in the first instance. Satisfying may lead to a bargain, but a bargain that does not necessarily conform to the parties’ cherished expectations will be tenuous and pressures to overturn it will intensify if the project has a high degree of political salience.

Complexity also has the implication that the linkage between a negotiation strategy and negotiation outcomes may not necessarily be clear-cut. Scholars, for example, maintain that a problem-solving strategy is likely to lead to a compromise or an integrative outcome.\(^{38}\) Yet, such a linkage may not necessarily be valid in the context of complex negotiations. This is so for several reasons. First, it is not entirely clear that a problem-solving strategy pursued by actor A will necessarily be viewed in such a manner by actor B. Secondly, it may also be difficult to implement such a strategy consistently. A good example of this is the failed merger negotiations between Telia and Telnor.\(^{39}\) Telia was Sweden’s largest telecom operator, while Telnor was the largest telecom operator on the Norwegian side. The negotiations began in September 1997 and eventually ended in failure on 16 December 1999. The authors suggest that the negotiations ostensibly collapsed because the parties could neither agree on the structure of ownership nor whether to locate the headquarters of their combined business in Norway or Sweden. Underlying this seeming intractability were the perceived actions of either party and those of outsiders, which rendered the negotiation very difficult.
indeed. This was made problematical in the first instance because Lars Berg (Telia’s CEO) left the company and it was in him that the Norwegians had placed a considerable amount of trust. Secondly, the Norwegians felt betrayed as they believed that the Swedes had promised the new head office of the proposed company to them, but the Swedes for their part felt that no such commitment had been made. The then Swedish Minister of Trade and Industry Bjorn Rosengren made comments which the Norwegians found very insulting. In the midst of all of this the CEOs of the two companies were trying to find a resolution but the deck was clearly stacked against them. Indeed, even as Telia was negotiating with Telnor, a vice president of Telia was simultaneously engaged in negotiations with another company, Sonera.

In complex negotiations the importance of trust may also be somewhat circumscribed. Scholars have highlighted the importance of trust in shaping negotiating outcomes but in a context where many different variables are at play, thus giving rise to heightened ambiguity and uncertainty, trust is only one variable and depending on the context it may or may not be the most important one. This is assuming of course, that the parties have been able to build trust, which in itself may or may not be the case in cross-cultural negotiations.

Consider, for example, the development of power projects in India. A key problem in these projects was less the presence or the absence of trust but more the fact that the Indians and the foreign power developers had different conceptions as to what constitutes an equitable risk allocation. Indians simply did not consider it fair that they were being asked to bear all of the risks (foreign exchange risk, demand risk, fuel price rise risk), while power developers only had to bear the construction, operating, and political risks in the development of these projects. Kumar, Rangan and Rufin (2005) note that such an allocation is not viewed favorably in many host countries. It also goes against the principle of need or equality, which remains the dominant justice norm in India as opposed to equity, which is the principal justice norm in individualistic societies.

The recognition that trust, while no doubt useful, may not be as influential in shaping negotiation outcomes has so far gone unremarked in the negotiation literature. This is an issue that may have relevance both for the academic scholar as well as the practitioner. From an academic standpoint, it suggests the contextual importance of trust in shaping negotiating outcomes. From a practitioner perspective it suggests that while trust may no doubt be useful, as is the case in many negotiations, it is by no means something that practitioners can necessarily depend upon.
(c) Not everything may be negotiable

Institutional differences also have the derivative implication that not everything may be negotiable at any given point in time. Although this is not a novel insight per se and scholars have often talked about intractable conflicts, this insight has not been adequately developed or discussed in the cross-cultural negotiation literature. On the contrary, the assumption has often been made that cross-cultural differences in preferences may provide the opportunity for the parties to fashion an integrative agreement. And yet, as the Fusion-Mitsubishi dispute reminds us, conflicting cognitive expectations rooted in different assumptions may make conflict resolution difficult, if not impossible altogether. It took more than a decade for this conflict to be resolved and that occurred when the president of Fusion had stepped down from his post. The failure of the majority of fast-tracked power projects to take off in India may also at least in part be attributable to the conflicting mindsets that the foreign developers and the Indian regulatory authorities brought to the venture. The foreign developers wanted a guaranteed rate of return to compensate them for operating in what they perceived to be a high-risk environment. The Indian regulatory authorities by contrast, viewed this as not merely excessive, but increasingly as exploitative and unfair. Implicit in these conflicting expectations are different conceptions of fairness that are rooted in different institutional norms. The notion that high risk needs to be compensated for by high return may well be the standard operating procedure in institutional contexts where the Western developers emanate from, but in India, where poverty syndrome and idealism are dominant, this norm is not likely to hold much sway. Wade-Benzoni, Hoffman, et al. (2002), for example, note that conflicting assumptions can often lead the actors to perceive the situation in zero-sum terms thus impeding a positive outcome.

(d) Implementation of negotiated agreements

Negotiation scholars have for the main part focused on the issue of attaining an agreement. Important as this is, there is the equally important issue of the implementation of the agreement. This too often poses problems for a wide variety of reasons, and the institutional lens can provide important insights into this issue. Implementation may be problematical for a number of different reasons. First, the parties may have different perceptions of time and these perceptions may then shape how vigorously they go about the implementation. We know that North American/European cultures, for example, are much more sensitive to issues of time relative to their Asian counterparts. Second, and
notwithstanding a signed contract, there may be incomplete/imperfect understandings which may further bog down the implementation. Regulatory delays are a further potential obstacle in this process. In instances where the parties suspect opportunistic actions on the part of their partner, they may slow down the policy implementation process. A good example of perceived opportunism affecting implementation can be found in the joint venture (TNK-BP) that British Petroleum established with a group of Russian investors (AAR). The joint venture was formed in September 2003 and the objective was to 'make it a world class energy company.' The company was headquartered in Russia and a multinational team was responsible for managing it with Robert Dudley being the CEO of the company. The company grew over time with net revenues increasing from US $10.4 billion in 2003 to US $24.7 in 2006. Nevertheless, the joint venture soon found itself in trouble. In 2007 the Russian shareholders sought to oust Dudley from his position on the grounds that he sought to give greater priority to BP's interests at the expense of the joint venture's interests. An example of this from the Russian standpoint was the fact that BP blocked AAR's proposals for the company to expand internationally. BP, by contrast, sought to pin the blame on Russian managers, arguing that they had challenged Dudley’s authority. As Papiyran (2008) notes ‘For example, BP claimed Khan acted in breach of instructions from Dudley in applying for 63 work permits for foreign staff instead of the 150 requested. BP also claimed Andre Maiiddank, head of legal affairs, refused to confirm the names Dudley had nominated for the boards at more than a dozen key subsidiaries’. BP also countered that the venture’s main areas of operations were always supposed to be Russia and Ukraine as opposed to the larger world market (Inkpen and Moffet, 2009). Finally, in many international business transactions NGOs are now coming to play an important role and we would suppose that their involvement may further complicate the process of implementing a negotiated agreement.

In an institutional context where NGOs are becoming increasingly important, many international business relationships may also be subject to NGOs’ critiques. A definition of NGO is proposed by Teegen, Doh, and Vachani (2004) who note ‘NGOs are private, not for profit organizations that aim to serve particular societal interests by focusing advocacy and/or operational efforts on social, political, and economic goals, including equity, education, health, environmental protection, and human rights.’ The number of NGOs seem to have proliferated in recent years and they range from organizations that are relatively small, to ones that are extremely large.
NGOs represent a wide variety of different interests, ranging from environmental protection, to child poverty and human rights, among others. In different projects different classes of NGOs may play an influential role in critiquing a particular project and bringing pressure to bear both on the host country's government and the foreign investor to change their behavior. NGOs are primarily concerned with ensuring (a) transparency in the manner that projects are awarded to investors; (b) distributive justice that is the outcomes are equitably distributed; (c) preservation of natural resources; (d) employment opportunities; and (e) reasonable pricing (Doh, 2002). With the advent of NGOs, bargaining becomes a more complex process and also a more volatile one for a number of different reasons. Some have suggested that the involvement of NGOs may help to ‘boost the effectiveness, as well as the perceived legitimacy and justice of international negotiations.’ Against this, the argument has been made that NGOs may have their own particular set of problems. NGOs have been critiqued on the grounds of ‘unfair communication, distorted information, arbitrary selections, and hidden agendas.’ This has the implication that NGOs strategies and tactics may not have the elevated moral status they might claim. It has also been maintained that many NGOs have a single-issue agenda as opposed to a multi-issue one, while they simultaneously expect firms to have a multi-issue agenda. An irony in all of this is that by insisting on their own unique-issue focus, the NGOs may themselves fail to respect the interests of the other stakeholders. The argument has also been made that while demanding good governance from firms, NGOs themselves may lack good governance. Finally, it has also been suggested that the effectiveness of NGOs may vary depending on the level of institutional development of the country (Vachani, Doh, & Teegen, 2009). In institutionally developed countries multinational firms are likely to face greater pressure from NGOs due to the greater number of them as well as their greater efficacy. It has also been maintained that if multinational firms were to adopt a more proactive strategy in dealing with the negative externalities of their operations they might be more successful in establishing legitimacy and thus defusing any critiques emanating from NGOs.

Attaining and maintaining external legitimacy therefore becomes much more critical than simply signing a contract. The attainment of legitimacy requires creativity and subtlety. Creativity is essential to integrate the divergent interests of the parties in an effective manner; subtlety is to ensure that the integration is done in artful way, which does not trample upon the sensitivities of different actors. In tandem,
creativity and subtlety highlight the key dimensions of stakeholder management in an international business context.

**Implications of complexity**

When the negotiation process and/or the outcome develops in a manner that is alien to what the negotiators are expecting, interruptions are all but inevitable (see Figure 1.1). Negotiators will need to engage in sense-making as they deal with the unexpected events or surprises. They will be forced to ask questions such as: Where do we go from here? Why is the negotiation process not proceeding smoothly? Should we have pursued an alternative negotiation path? Confronted by unexpected delays and the heightened costs of conducting complex negotiations, they may also experience negative emotions. Negative emotions are reflective of a loss of control and this may lead negotiators to undertake actions to try to restore control. They can do this in different ways depending upon the specific emotion activated. If the negotiators get frustrated or angry they may react in an aggressive way but, if on the contrary, they experience tension or anxiety they may seek to escape from the situation. More fundamentally, surprises can trigger
three alternative responses among negotiators. They can respond to the interruption by acting in an aggressive mode, such as challenging the legality or authenticity of what their counterpart has done and threatening to take them to court. This is what Enron attempted in the first instance when the plans to build the Dabhol power plant were scrapped by the Indian authorities in 1995. Enron initiated arbitration proceedings and simultaneously brought pressure on the Indian government to reverse its course. An aggressive strategy may be pursued by firms that are strongly convinced of the legitimacy of their position or that have made substantial investments in pursuing their strategy. It may also be characteristic of firms that are extremely rigid in their approach to implementing strategy.

Alternatively, the negotiators could respond to interruptions by exiting the chaotic situation, that is by fleeing. Such a strategy may appeal to individuals and/or organizations that are intolerant of ambiguity but may prevent them from capitalizing on potential opportunities. A third possibility is one of paralysis, where negotiators are unsure either about exiting or pursuing an aggressive course of action. This strategy would be reflective of organizations that lack the skills necessary to bridge the institutional distance.

The management of complexity in a negotiating context is an area that is potentially of relevance both to practitioners as well as negotiation scholars. From the standpoint of practitioners, it is in the first instance important to just accept complexity as a way of life and not to get stymied or overly frustrated by it, notwithstanding that such reactions may be all but inevitable. Complexity also imposes on negotiators the need to manage their expectations. This is true both for the process as well as the outcome of negotiations. They must recognize that the process may not be a smooth or a linear one, and that they must learn both to recognize and have the capacity to deal with surprises.

Implications
The institutional perspective suggests that in complex environments, the negotiation of a contract is only the first step in a lengthy negotiation process and it is by no means the end of negotiation. Enron, or for that matter the other power producers, seemed not to have recognized this complexity when they negotiated (at first successfully) both for a guaranteed rate of return and a guarantee from the central government which mandated that they would get paid if the local state electricity boards were unable to fulfill their obligations. These agreements were seen as being increasingly unfair and led to the
renegotiation of the original bargain, which in turn itself proved to be unstable. The project was initially cancelled in 1995, renegotiated in 1996, and eventually collapsed in 2001 when the conflict between the Maharashtra Electricity Board and the Dabhol power company escalated. The immediate precursor of this was the termination notice issued by Dabhol against the Maharashtra Electricity Board in May 2001 for non-payment of dues (Inkpen, 2002). In September of that year, the then CEO of Enron in a letter to the Indian prime minister proposed selling the plant for US $1.2 billion in conjunction with the purchase of offshore debt which amounted to US $1.1 billion for a total price of US $2.3 billion.

It is thus imperative that practitioners and negotiation researchers begin to expand their horizons as they seek to develop a more holistic understanding of international negotiations. An emphasis on a negotiated contract is at best a first step in an admittedly messy process, and negotiation researchers must be sensitive to this notion. Negotiation practitioners and scholars must also recognize that in a complex negotiation the different strategies must be assessed in their relation to attaining and maintaining legitimacy.

The existing practitioner and academic literature has sought to link negotiation strategies with win-win or win-lose scenarios but, as we have suggested earlier, this would be inadequate in the context of complex negotiation where legitimacy remains key. Legitimacy is not only to be attained but to be maintained and, if damaged, repaired. It would be useful then for negotiation practitioners and scholars to map precisely the terrain between negotiation strategies, the attainment, the maintenance, and the repair of legitimacy. More specifically, are the negotiation strategies designed to attain legitimacy similar to the ones designed to maintain it, and/or repair it, if damaged? Furthermore, how does the effectiveness of a particular negotiation strategy for legitimacy attainment, maintenance, or repair vary across different institutional environments? For example, do foreign power developers in India need to use a similar or a different set of negotiation strategies for attaining legitimacy in China as compared to India?

In this chapter we have set out the case for the relevance of the institutional perspective in understanding the dynamics of negotiations. The book uses India and China as exemplars of varying institutional frameworks and highlights both the theoretical and practical implications of this framework for managers seeking to negotiate in India or China. A key insight is that we need to look at international negotiations holistically, something that remains undeveloped both in
the academic and the practitioner literatures on international negotiations. Such an approach will not only enhance the ecological validity of negotiation research and studies, but it may also invite or raise intriguing questions about interactional processes in negotiations. In a world where China and India are gaining ascendancy, we need to delve into greater detail into the institutional underpinnings of negotiation processes and outcomes.
India and China: A Historical Overview

The purpose of this chapter is to provide a general overview of how India and China have evolved over many centuries. This is essential for understanding the factors that have contributed to the development of strategic thinking in these countries. The strategic thinking constitutes an essential background to understanding the way that actors in these cultures approach the process of negotiations. China and India have considerably different historical legacies. These differences notwithstanding, we are dealing with ancient civilizations that have had their ups and downs during the ages. The East India Company played an important role in India, in sharp contrast to China. In China no company had so much influence and ultimately China was never colonized except for settlements in coastal cities. This is a crucial difference in the historical evolution of these societies and one that has had an important impact in terms of how they each relate to the external world. The other significant difference and one of more recent origin, is the Chinese experience of Communism. India, although attracted to the socialist model, never underwent a revolution of the type that China went through. Mao Zedong’s legacy was in many ways repudiated by Deng Xiaoping, and this led China to reverse radically its path of economic transformation. India never went through such radical changes post-1947 and while the economic outcomes were no doubt mixed they were never so catastrophic that might have called for an immediate reversal of the economic path. Indian liberalization began only in 1991.

Historical overview

Indian civilization is radically different from Confucian, European, or Islamic cultures.\(^1\) The caste system is no doubt one important
differentiator, but in addition India is also a considerably heterogeneous society. As Kumar and Sethi (2005: 73) note ‘Here is a country of more than a billion people, with 18 major languages, 1600 minor languages and dialects, umpteen castes and subcastes, 50 or so recognized tribes, and 6 ethnic groups.’

Modern India has its origins in the Indus-Valley civilization, which flourished in the Indian subcontinent thousands of years ago. This was a sophisticated civilization in which commerce played an important role and was followed by the rise of the Vedic civilization. It was during the Vedic period that some of the classic Indian texts were written (for example, Vedas). The Mauryan Empire came to dominate the Indian subcontinent in this period, It has been estimated that during this period India ‘had the largest economy of the ancient and medieval world, controlling between one third and one fourth of the world’s wealth up to the 18th century.’ It might indeed be arguable that India was the world’s first globalized economy. Key aspects of the Indian statecraft were also developed during this period. The well-known book on statecraft, the Arthashastra, written by Kautilya remains a classic today. As Cohen notes this ‘is one of the most remarkable applications of rational thought to the problems of social organization.’ He further notes that the Mauryan Empire had developed a subcontinental reach but most importantly it exerted its influence in cultural but not in military terms. The Mauryans were Buddhists and this led to the export of Buddhism from India to its neighbors.

India was once again reunited in the fourth century AD under the aegis of the Gupta Empire and remained so until the sixth century AD. This is often referred to as the ‘Golden Age’ of India. During this period India underwent both an intellectual as well as a religious resurgence. There were major developments in science and technology, and architecture, as well as in artistic creativity, including sculpture and painting. The decimal system and the concept of zero were both developed in this period. The Gupta Dynasty started to undergo a decline from the latter part of fifth century AD. Repeated invasions by the Huns along with economic stagnation played a part in the empire’s decline. It is to be noted, however, that with the exception of the Maurya and Gupta Empires, the early Indian political order was highly unstable. There was a disjunction between the political and the social power, and the idea that the state could play an active role in effecting change was lacking. The focus was more on social conduct than on issues of governance.

The advent of the Mughal Rule marked the beginning of a new phase in Indian history. The Mughal Dynasty was established by Barber, who
claimed descent both from Timur and Genghis Khan. The Mughals had established their dominance over the Indian subcontinent by 1600. The dynasty’s gradual decline began in 1707 and they were finally ousted by the British during the 1857 war of independence. A salient aspect of this was the fact that the Hindu majority was now being ruled by the Mughals, who subscribed to the Islamic ethos. It has been pointed out that many of the Mughal emperors demonstrated religious tolerance with Akbar being a preeminent example of this. He abolished the poll tax (jizya) for non-Muslims and even married a Hindu woman. This tolerance no doubt made the Mughal’s ability to govern the populace that much easier. One of the later emperors in the Mughal Dynasty, Aurangzeb, however, sought to undo much of the good work that Akbar had done. He reintroduced the poll tax, sought to increase the proportion of Muslims who were employed by the state, proscribed the construction of new temples, and, in some cases, ordered the demolition of existing temples. At its peak the Mughal Empire occupied an area that was similar in size to the Mauryan Empire. Its decline may be attributable to a number of different factors, including religious intolerance, imperial overstretch, the development of new potential powers with the requisite military capability, and a gentry that was now prepared to defend its interests against an encroaching state.

The involvement of the East India Company in trading with India began under Mughal Rule. The Mughal emperor Jahangir had given the company permission in 1617 to commence trading in India. The interaction between the Indian rulers and the company developed and strengthened over time. The rulers started giving the company trading privileges in lieu of income or loans from them. At the same time, the strategic objectives of the East India Company also underwent a shift. Concerned about the outflow of precious metals from England to India, the East India Company became concerned about rectifying the deficit and increasing its sources of income. One way of doing this was to enhance its hold over the rulers in the different kingdoms which then prevailed in India. One of the most decisive incidents in this regard was the victory of the forces led by the East India Company over the Nawab of Bengal, Siraj Ud Daulah. As Stein notes ‘This battle at Plassey, is often considered the true beginning of the British Empire in India, since it resulted in enormous properties falling into Company ownership.’ The company appointed Robert Clive as the first ‘Governor of Bengal’ in 1757. The land taxation system introduced by the British in Bengal had severe detrimental consequences for the inhabitants of the state. It was a regressive and exploitative system that drove people to destitution and further
International Negotiation in China and India aggravated the consequences of drought, which led to the great famine of Bengal. The success of Clive and the East India Company in gaining control over Bengal further strengthened Clive’s hand in dealing with the other India rulers. It also appears that many of the Indian rulers did not fully appreciate the potential dangers inherent in their alliances with the company. Stein suggests that this may have been due to the fact that the company ‘made no bid to establish itself as an independent source of state sovereignty.’ It is also the case that the Indian rulers had more immediate or pressing concerns. As Stein notes ‘Warfare between regional rulers was intense, and “subsidiary alliance” brought protection against neighborly invasion.’ An additional factor was that the British were also successful in co-opting the capitalist classes that had slowly been emerging as a product of the social forces that had been set in motion much earlier. The co-optation was facilitated by the fact that the Indian rulers had not explicitly guaranteed private property rights to individual subjects. It was not clear what belonged to the ruler and what to the subject. By contrast, the company was able to provide such security. The East India Company assumed control of most of the Indian subcontinent by 1856. In 1857 there was a mutiny against it. The mutiny emerged in Northern India and even as the rebellion dragged on, the rest of British India remained peaceful. The British were successful in quelling this mutiny thanks to the support of their Indian allies. In 1858, the East India Company was dismantled and India came under the direct control of the Crown.

This shift of control was significant for a number of different reasons. First and foremost it meant that British rule had now been formalized. This was not the case previously, where the East India Company had always operated under the authority of the Mughal emperor. Second of all, the transfer also meant that all the Indian territories were now to be governed as a single entity. Indeed it was the British ‘who introduced India to the notion of a state as a sovereign entity with definable territorial boundaries.’ It has been pointed out that the physical presence of the British in India was not huge, but notwithstanding this they were able to exercise effective control by pursuing a policy of ‘divide and rule.’ The British imperial rule left a deep imprint on Indian society and there continues to exist disagreement as to its impact on Indian development. On the one hand, there is the contention that the economic policies of the British during colonial rule were detrimental to Indian development. The British imported agricultural products, minerals, and raw materials from India, and exported the manufacturing output to India, which inhibited the development of Indian industry. The other side of the coin is that the British laid the foundations of a legal
system, exposed the locals to English, and set in place a bureaucratic administration for the governance of India.

Whatever are the merits or the demerits of the arguments about the impact of British colonialism on India, it is unquestioned that it generated a nationalist reaction. The British relied on the Indian elite to maintain control and this did not go down well. The Indian National Congress Party was formed in 1885 and this was the precursor to the Congress Party, which emerged in India post-independence. At its inception this party had both Hindu and Muslim members but increasingly the Muslims began to feel the necessity of establishing their own party, which led to the establishment of the All India Muslim League in 1930. The parties were both united in their objective to free India from British domination but over time a deep split emerged between them, which was to have profound consequences for the future development of the country. Civil disobedience came to be championed by Mahatma Gandhi as a way of putting pressure on the British to grant India its independence. His philosophy of Ahimsa or non-violence gained traction from the 1920s onwards and the pressure on the British continued to increase. At the end of World War II, it became clear that the colonial rule was no longer tenable. As the idea of independence and the end of the colonial rule became increasingly imminent, the British were confronted with the challenge of how to bequeath power to the newly emerging state in an orderly fashion. The original intention of the British was to leave behind a unified India, and the Congress was originally opposed to the idea of partition. However, the Muslim League, led by Muhammad Ali Jinnah, felt uncomfortable with the proposal and demanded a separate state, consisting of present day Pakistan and Bangladesh. The proposal for partition was vehemently rejected by the Congress Party. In 1946 there were riots in Calcutta, where at least 5000 people died. This led to widespread disturbances in the Indian subcontinent. The escalating conflict left Britain with an unenviable choice: should it seek to restore order or should it retreat from India? The then viceroy, Lord Mountbatten, opted for the second option. The process of partition was a violent one with conflicts erupting between Sikhs, Hindus, and Muslims. It is estimated that up to 500,000 people died in the ensuing turmoil. The British then made the decision to create two separate entities, namely India and Pakistan. India gained independence as a secular state on 15 August and Pakistan as an Islamic state a day earlier. As Kiesing and Norlow note ‘In this way, two radically different systems faced each other from the outset, one constitutionally secular system and one ruled by the Koran.’
At the time of the partition, the princely states had the option of joining the union or staying out of it altogether. The most problematic situation concerned the state of Jammu and Kashmir, which had a majority Muslim population but a Hindu ruler. The original desire of the maharajah was to seek independence and to stay outside of the union altogether. However, following independence, violence erupted in Kashmir and this came to be viewed as a Muslim rebellion against the maharajah. He decided to accede to India even though his state had a Muslim majority. This decision was not accepted by Pakistan and it led to hostilities between the two countries. The United Nations played a role in arranging a truce but the underlying dispute remained unresolved. Jammu and Kashmir are now divided into two, with a line of control separating the two countries. Neither of the two countries recognizes the Line of Control (LOC) as an international border and both continue to claim the entire region as belonging to them. This remains an unresolved issue between the two countries even at the time of writing. There have been to date ‘five’ Indo- Pakistani wars beginning with the one in 1948. India claims that the Simla agreement of 1972 had led to a resolution of all of the disputes, including the one involving Kashmir. More recently, there was the invasion of Kargil in 1999 by Pakistani forces and Kashmiri militants, which led to the loss of many Indian lives. Tensions between the two countries further escalated when the Indian Parliament was attacked leading to a concern among the Western powers that a nuclear conflict might erupt. The terrorist attacks which took place in Mumbai in 2008 and in which blame was put on intelligence services in Pakistan have not helped to improve the relationship between the two countries. There has been an attempt at starting some kind of a composite dialogue but the process has yet to make any substantial progress.

India’s relationship with China is improving, although tensions continue. Disputes center around issues of territory, China’s relationship with Pakistan, and more broadly on achieving regional supremacy as the two countries compete to become not only the new hegemony in the Asia-Pacific region, but also to expand their global reach and influence. China invaded India in 1962, an attack that took Jawaharlal Nehru and the Indian government by surprise. India suffered a major defeat with the loss of more than 3000 troops. The conflict centers on issues of territory and while India and China are talking to each other, the disputes have yet to be successfully resolved. Arunachal Pradesh, is for example, considered by China to be an integral part of its territory. The Indians equally consider Arunachal Pradesh to be an integral part of
India. The Chinese suspect Indian involvement whenever there is trouble in the Tibetan region.\(^3\) Chinese assistance to Pakistan in developing nuclear capability is an equally problematic issue and an irritant for the Indians. The relationship is also experiencing tensions on economic matters. As Simon Tay notes ‘In 2009 India hiked tariffs on telecommunication imports from China by as much as 200 per cent in order to limit the flow of Chinese goods into that sector, which New Delhi considers both economically and strategically important.’\(^3\)

In the external realm, India’s relationship with the United States has undergone a sea change. The relationship between the two countries during the Cold War period was very tense and prickly. The end of the Cold War, the liberalization of the Indian economy from 1991, and a better strategic understanding of each one another are leading towards a strategic reorientation as to how the two countries view each other. Bill Clinton, George Bush, and Barack Obama have all visited India in a little more than a decade. India has signed an agreement with the United States on civilian nuclear cooperation. The Indian economy is booming and this gives US firms plenty of opportunities to access the Indian market. Likewise, many Indian firms are venturing overseas, and in the information technology sector, many of these are heavily dependent on the North American market. In his recent visit to India, Obama also expressed his support for India becoming a member of the UN Security Council. Indians were no doubt pleased by this endorsement and its symbolic value, although becoming a member may not necessarily happen any time soon.

India’s current position in the international system is a far cry from how the British perceived India at the time of independence. As Cohen observes ‘The British were divided over the idea of India becoming a nation. Some found it idealistic or unrealistic, arguing that India was at best a congeries of people or nations and needed a firm hand to keep these different elements from tearing one another apart,’\(^3\) The last several decades have clearly demonstrated that India has withstood many of these challenges. As Rodney Jones notes ‘India’s greatest strategic feat in the first three decades of independence was to head off further potential fragmentation of its territory both from Muslim disquiet after partition and from language based subnational movements in southern and western India. The Congress Party-led system defused a grass roots movement of Tamil speakers whose demands once verged on independence. It also overcame agitations by Gujarati- and Marathi speakers by giving them separate linguistically based states in India’s federal system.’\(^3\) This internal unity has allowed India to deal with other
internal threats (for example, the Sikh Khalistan movement), and while it is clear that some threats continue to persist (for example, Naxalites), it is unlikely that they will pose a threat to the fundamental territorial integrity of India. The biggest challenge we feel remains Kashmir but this is a problem with deep historical origins and has also been conditioned by the Cold War dynamics at its inception. Furthermore its resolution is not simply dependent on what India does or does not do. As in any conflict, both of the parties must make a genuine effort to deal with the problems confronting them. Pakistan too must be genuinely interested in resolving the issue in a constructive manner. While both parties publicly profess to resolve this they are finding it difficult to find a solution.

What insights can we gain about the Indian mindset and the Indian way of thinking from the country’s historical experience? This is an important issue to consider because the underlying mindset has an important influence on perceptions, attitudes, and behaviors. Perceptions, in turn, become an important source of influence on actors negotiating strategy. It is also worthwhile noting that while the actors may or may not be themselves conscious of its impact, that does not in any way negate the significance of the mindset. There is, first of all, the strong belief that as a civilizational entity India is unique. The uniqueness of Indian civilization is derived from the number of different religions it has spawned (Hinduism, Buddhism, Jainism, and Sikhism), advancements in the field of mathematics and science, and the development of complex organizational forms when the Europeans were living as primitive tribes. A key implication of this is that because India is so unique and has so much to teach the rest of the world, it should be given respect. As Jones notes ‘India’s strategic culture sees status as an objective reality, a matter for the other state to recognize and act in accordance with, not a favor, for the other states to confer.’ The Indian elite are also very conscious of the country’s cultural roots; one consequence of this is the continual search for the eternal truth, which is highly valued in the Indian culture. The search highlights the importance of values such as patience, persistence, longer term focus, and a heightened emphasis on the national interest. A key implication of this is that Indian decision makers will not make compromises very easily since a compromise may be viewed as a departure from the search for the eternal truth.

The Indian history is also one of external domination. India was first occupied by the Moghuls and later by the British. There is therefore, considerable sensitivity to the issue of foreigners acting in ways or
making demands on India that impinge on its sovereignty. In the early
days of independence the Indian leaders also called for self-reliance and
lack of external dependence; much of this was attributable, at least in
part, to the colonial experience. As India is now becoming better inte-
grated into the global economy these concerns have no doubt lessened,
but it would be premature to say that they have disappeared entirely.
We would suppose that some sort of sensitivity to foreign activities
that are perceived to impinge on Indian interests will always remain,
although its impact is bound to become diluted as India’s influence in
world affairs increases.

**Historical overview of China**

With nearly 4000 years of continuous history, China is one of the
world’s oldest civilizations. China has a population of 1.33 billion
citizens spread over an area of 9.6 million square kilometers. Most
of the surface consists of mountains and only 14 per cent of the area
is arable. Many of the elements that make up the foundation of the
modern world originated in China, including paper, gunpowder, credit
banking, the compass, and paper money.

Right up to the beginning of the nineteenth century, China possessed
one of the most advanced societies and economies in the world. In the
nineteenth and twentieth centuries, imperialism, internal weakness,
and civil wars damaged the country and its economy, and led to the
overthrow of imperial rule.39

The conventional view of Chinese history is that of alternating peri-
ods of political unity and disunity, with China occasionally being domi-
nated by inner Asian peoples, most of whom were in turn assimilated
into the Han Chinese population. Cultural and political influences from
many parts of Asia, carried by successive waves of immigration, are part
of the modern culture of China.

With a recorded history of nearly 4000 years, Chinese civilization is
one of the oldest in the world. Until modern times its development has
been largely indigenous, partly because of the independent spirit of the
Chinese people and partly because of China’s isolation from other great
civilizations.40

Chinese civilization originated in various regional centers along both
the Yellow River and the Yangtze River valleys in the Neolithic era, but
the Yellow River is said to be the cradle of Chinese civilization. The writ-
ten history of China can be found from as early as the Shang Dynasty
(c. 1700 BC to c. 1046 BC). Oracle bones with ancient Chinese writing
from the Shang Dynasty have been dated to as early as 1500 BC. The
origins of Chinese culture, literature, and philosophy developed during the Zhou Dynasty (1045 BC–256 BC).41

Pre-imperial China 722 BC–220 BC

In the eighth century BC, power became decentralized during the Spring and Autumn Period, named after the influential Spring and Autumn Annals. In this period, local military leaders used by the Zhou began to assert their power and vie for hegemony. The situation was aggravated by the invasion of other peoples from the north west, such as the Qin, which forced the Zhou to move their capital east to Luoyang in Henan province. This marks the second major phase of the Zhou Dynasty: the Eastern Zhou. In each of the hundreds of states that eventually arose, local strongmen held most of the political power and continued their subservience to the Zhou kings in name only. For instance, local leaders started using royal titles for themselves. The Hundred Schools of Thought of Chinese philosophy blossomed during this period, and such influential intellectual movements as Confucianism, Taoism, and Legalism were founded, partly in response to the changing political world. The Spring and Autumn Period is marked by a falling apart of the central Zhou power. China now consisted of hundreds of states, some of them only as large as a village.42

After further political consolidation, seven prominent states remained by the end of fifth century BC, and the years in which these few states battled each other are known as the Warring States Period. Although there remained a nominal Zhou king until 256 BC, he was largely a figurehead and held little real power. As neighboring territories of these warring states, including areas of modern Sichuan and Liaoning, were annexed, they were governed under the new local administrative system of commandery and prefecture. This system had been in use since the Spring and Autumn Period, and parts can still be seen in the modern system of provinces and counties as the basic administrative units. The final expansion in this period began during the reign of Ying Zheng, the king of Qin. His unification of the other six powers, and further annexations in the modern regions of Zhejiang, Fujian, Guangdong, and Guangxi in 214 BC, enabled him to proclaim himself the First Emperor.43 After ascending to power he named himself Qin Shihuang (first emperor of Qin) in 221 BC but he had to surrender power in 207 BC.

The reason so much is known about early Chinese history is that the Chinese traditionalist view of history sees the rise and fall of dynasties as passing the ‘Mandate of Heaven’, meaning that an emperor could lose the mandate bestowed from heaven if he did not behave morally.
In this view, a new dynasty is founded by a moral righteous founder. Over time, the dynasty becomes morally corrupt and dissolute. This immorality is reflected in natural disasters, rebellions, and foreign invasions. Eventually, the dynasty becomes so weak as to allow its replacement by a new dynasty.

The first systematic Chinese historical text, *Records of the Grand Historian*, was written by Sima Qian (145 BC–86 BC). The book covers the period from the time of the Yellow Emperor until the author’s own time. Due to his highly praised work, Sima Qian is often regarded as the father of Chinese historiography. China developed historiography early because the idea that one can learn from history was obvious under the backward-looking Chinese tradition.

**Imperial China 221 BC–1911AD**

Historians often refer to the period from Qin Dynasty to the end of Qing Dynasty (1911) as Imperial China. Though the unified reign of the Qin Emperor lasted only 12 years, he managed to subdue great parts of what constitutes the core of the Han Chinese homeland and to unite the Han under a tightly centralized Legalist government seated in Xianyang (close to Xi’an). The doctrine of Legalism that guided the Qin emphasized strict adherence to a legal code, something that was not dominant during most of China history, and the absolute power of the emperor. This philosophy, while effective for expanding the empire in a military fashion, proved unworkable for governing it in peacetime. The Qin Emperor presided over the brutal silencing of political opposition, including the event known as the burning of books and burying of scholars. This would be the impetus behind the later Han synthesis incorporating the more moderate schools of political governance.44

The Qin Dynasty is well known for beginning the construction of Great Wall of China, which was later augmented and enhanced during the Ming Dynasty. The other major contributions of the Qin include the concept of a centralized government, the unification of the legal code, development of the written language, measurement, and currency of China after the tribulations of the Spring and Autumn and Warring States Periods. Even something as basic as the length of axles for carts had to be made uniform to ensure a viable trading system throughout the empire.45

The Qin Dynasty was followed by the Han Dynasty (206 BC–220 AD) and other subsequent dynasties. During the imperial period the classical Chinese bureaucratic system evolved for the better. One of the most unique characteristics of this long period is the unveiling of imperial
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examinations. From the time of the Han Dynasty until the implementation of the imperial examination system, most appointments in the imperial bureaucracy were based on recommendations from prominent aristocrats and local officials, whilst recommended individuals were predominantly of aristocratic rank.

Emperor Wu of the Han Dynasty started an early form of the imperial examinations, in which local officials would select candidates to take part in an examination of Confucian classics from which he would select officials to serve by his side. Later imperial officials were responsible for assessing the quality of the talents recommended by the local elites. This system continued until the Sui Dynasty established a new category of recommended candidates for the mandarinate in 605 AD. For the first time in history, an examination system was explicitly instituted for a category of local officials. This is generally accepted as the beginning of the imperial examination system.46

Republican China

Imperial China was brought to a conclusion by a revolutionary military uprising, beginning on 10 October 1911 in Wuhan. The provisional government of the Republic of China was formed in Nanjing in March 1912 with Sun Zhongshan (Sun Yat-sen) as president, but Sun was forced to turn power over to Yuan Shikai, who commanded the New Army and was prime minister under the Qing government, as part of the agreement to allow the last Qing monarch to abdicate. Over the next few years, Yuan proceeded to abolish the national and provincial assemblies, and declared himself emperor in late 1915. Yuan’s imperial ambitions were fiercely opposed by his subordinates and, faced with the prospect of rebellion, he abdicated in March 1916, and died later that year. His death left a power vacuum in China and the republican government was shattered. This ushered in the warlord era, during which much of the country was ruled by shifting coalitions of competing provincial military leaders.

In the 1920s, Sun Zhongshan established a revolutionary base in south China, and set out to unite the fragmented nation. With Soviet assistance, he entered into an alliance with the Communist Party of China. After Sun’s death from cancer in 1925, one of his protégés, Jiang Jieshi (Chiang Kai-shek), seized control of the Nationalist Party and succeeded in bringing most of south and central China under its rule in a military campaign known as the Northern Expedition.47 Having defeated the warlords in south and central China by military force, Jiang was able to secure the nominal allegiance of the warlords in the
North. In 1927, Jiang turned on China’s Communist Party (CPC) and relentlessly chased the CPC armies and its leaders from their bases in southern and eastern China. In 1934, driven from mountain bases such as the Chinese Soviet Republic, the CPC forces embarked on the Long March across China’s most desolate terrain to the north west, where they established a guerrilla base in Yan’an in Shanxi Province.48

During the Long March, the communists reorganized under a new leader, Mao Zedong.49 The bitter struggle between the Guomindang (GMD) and the CPC continued openly through the 14-year long Japanese occupation (1931–45) of various parts of the country. The two Chinese parties nominally formed a united front to oppose the Japanese in 1937 during the Sino-Japanese War, which became a part of World War II. Following the defeat of Japan in 1945, the war between the GMD and the CPC resumed, after failed attempts at reconciliation and a negotiated settlement.50

Following the Chinese Civil War and the victory of Mao’s Communist forces over the Kuomintang forces of Jiang Jieshi, who fled to Taiwan, Mao declared the founding of the People’s Republic of China on 1 October 1949. Mao’s first goal was to overhaul the land ownership system and make extensive land reforms. China’s old system of landlord ownership of farmland and tenant peasants was replaced with a distribution system in favor of poor and landless peasants. Mao laid heavy emphasis on class struggle and in 1953 began various campaigns to persecute former landlords and merchants, including the execution of the most powerful landlords. Drug trafficking in the country, as well as foreign investment, were largely wiped out. Many buildings of historical and cultural significance as well as artifacts were destroyed by the Maoist regime, since they were considered reminders of the ‘feudal’ past. Mao’s perception was that the peasants were like a sheet of white paper, where anything could be written. He believed that socialism would eventually triumph over all other ideologies, and following the First Five-Year Plan based on a Soviet-style centrally controlled economy, he took on the ambitious project of the Great Leap Forward in 1958, beginning an unprecedented process of collectivization in rural areas. Mao urged the use of communally organized iron smelters to increase steel production, pulling workers off agricultural labor to the point that large amounts of crops rotted without being harvested. He continued to advocate these smelters despite a visit to a factory steel mill which proved to him that high-quality steel could only be produced in a factory. He thought that ending the program would dampen peasant enthusiasm for his political mobilization, the Great Leap Forward.
Mao’s failure with the Leap reduced his power in government, whose administrative duties fell to Liu Shaoqi and Deng Xiaoping, but Mao was not happy with this constellation. To impose socialist orthodoxy and rid China of ‘old elements’, and at the same time serve certain political goals, Mao began the Cultural Revolution in May 1966. The campaign was far-reaching and intruded into all aspects of Chinese life. Red Guards terrorized the streets as many ordinary citizens were deemed counter-revolutionaries. Education and public transportation came to a nearly complete halt. Daily life involved shouting slogans and reciting Mao quotations. Many prominent political leaders, including Liu and Deng, were purged and deemed ‘capitalist-roaders’. The campaign continued until the death of Mao in 1976.

Mao’s death was followed by a power struggle between the Gang of Four, comprising Mao’s wife and other supporters of the Cultural Revolution, Hua Guofeng, and eventually Deng Xiaoping. The downfall of the Gang of Four in a coup d’état on 6 October 1976, a mere month after Mao’s death, brought about major celebrations on the streets of Beijing and marked the end of a turbulent political Mao era in China.

Deng Xiaoping maneuvered himself to the top of China’s leadership by late 1978. At the Third Plenum of the of the Eleventh National Party Congress, he announced the official launched of the Four Modernizations: modernization of agriculture, industry, defense, and science and technology, which together with economic reforms and openness, formally marked the beginning of a new era in China.

The new area began with the de-collectivization of the countryside, followed by industrial reforms aimed at decentralizing government controls in the industrial sector. A major document presented at the September 1979 Fourth Plenum, gave a ‘preliminary assessment’ of the entire 30-year period of Communist party rule. The document stated that Mao was 70 per cent correct, but that he became less so the older he got.

Deng championed the idea of Special Economic Zones, areas where foreign investment would be allowed to pour in without strict government restraint and regulations, running on a basic market system. Already in 1984 another 14 zones, called economic and development zones, were opened all the way along the Chinese east coast. Deng laid emphasis on light industry as a stepping stone to the development of other industries.

Although standards of living improved significantly in the 1980s, Deng’s reforms were not without criticism. Conservatives asserted that Deng opened China once again to various social evils and an overall
increase in materialistic thinking, while liberals attacked Deng’s unre-
lewing stance on political reform. Liberal forces began gathering in
different forms to protest against the Party’s authoritarian leadership.
In 1989, the death of Hu Yaobang, a liberal figure, triggered weeks
of spontaneous protests in the central square (Tiananmen Square) in
Beijing. The government imposed martial law, and sent in tanks and
soldiers to suppress the demonstrations. Many western countries briefly
suspended their formal ties with China’s government under Premier Li
Peng’s leadership, which was directly responsible for the military curfew
and crackdown.56

After the Tiananmen incidence, Deng retired from public view. While
he kept ultimate control, power was passed to the third generation of
leadership led by Jiang Zemin, who was hailed as its core. Economic
growth, despite foreign trade embargoes, returned to a fast pace by 1992.
Jiang’s macroeconomic reforms furthered Deng’s vision for ‘Socialism
with Chinese Characteristics.’ At the same time, Jiang’s period saw a
continued rise in social corruption in all areas of life. Unemployment
skyrocketed as unprofitable state-owned enterprises were closed to make
way for more competitive businesses.

The 1990s saw two foreign colonies returned to China: Hong Kong
from Britain in 1997, and Macau from Portugal in 1999. Hong Kong and
Macau mostly continued their own governance, retaining independ-
ence in their economic, social, and judicial systems.

In 2002 Hu Jintao assumed power as party general secretary of CPC
with Wen Jiabao as his premier. The continued economic growth of the
country as well as its sporting power status gained China the right to
host the 2008 Summer Olympics.

During the Hu-Wen period (2002–12) China continued high eco-
nomic growth, with a stronger focus on trying to reduce huge income
differences. In accordance with Confucian tradition there was a stronger
emphasis on a harmonious society. Along the same lines a Confucian
statue was erected at the central square in Beijing in 2010 to show that
the government wanted to activate China’s tradition, as it was realized
that communist ideology did not appear to be persuasive any longer.
The government also tried to boost consumption during the ten years
of reign, but failed to lessen inequalities in income.

Foreign affairs of modern China

China has historically been inward looking most of the time, but
between 1405 and 1433, the Chinese government sponsored a series
of naval expeditions conducted by Zheng He. The Yongle emperor designed them to establish a Chinese presence, impose imperial control over trade, impress foreign peoples in the Indian Ocean basin, and extend the empire’s tributary system. It is important to note that while the scale of Zheng’s fleet was unprecedented compared to previous voyages from China to the East Indian Ocean, the routes were not. Sea-based trade links had existed between China and Arabian peninsula since the Han Dynasty, as there was trade with the Roman Empire at that time. During the periods that China was conducting foreign trade it was mainly through land-trade routes like the Silk Route.

After the establishment of the People’s Republic of China in 1949 the government worked vigorously to win international support for its position that it was the sole legitimate government of China.

China was seen as part of the Soviet bloc after the establishment of the People’s Republic of China and the United States of America’s representative declined even to shake hand with Premier Zhou Enlai at the Asian–African Conference held in Bandung in 1955 according to rumors.

Except for a few Western countries that established diplomatic relations with China very early, such as some of the Nordic countries and France, most Western countries established diplomatic relations with China only during the 1970s. This may have been because China began to be more open towards other countries after the Cultural Revolution experiment was terminated. China gained a seat at the United Nations in 1971. Relations with the United States also began to thaw; in 1972 President Nixon visited China. Formal diplomatic relations were established in 1978, and the two nations have experienced more than 30 years of varying degrees of amiable or wary relations over such contentious issues as trade balances, intellectual property rights, nuclear proliferation, and human rights. In 2011 Sino-USA relations culminated with Hu Jintao’s visited Washington on a state visit together with a trade delegation of more than 100 Chinese business people. Obama said upon his arrival that the United States of America welcomed China’s efforts to play a greater role on the world stage and that power does not need to be a zero-sum game. This is of course the official rhetoric that is used, but does also show that the two countries have become more comfortable working together during recent years.

In the 1970s and 1980s China sought to create a secure regional and global environment for itself and to foster good relations with countries that could aid its economic development. To this end, China looked to the West for assistance with its modernization drive and for help in
countering Soviet expansionism, which it characterized as the greatest threat to its national security and to world peace in the 1970s and 1980s.

China’s opposition to the bids of two of its important neighbors, India and Japan, becoming permanent members of the UN Security Council has proved to be an irritant in their respective relationships. Japan, with its large economic and cultural influences in Asia, is seen by China as its most formidable opponent and partner in regional diplomacy. The two sides established diplomatic relations in 1972, and Japanese investment in China was important in the early years of China’s economic reforms and ever since.59

In recent years, China’s leaders have been regular travelers to all parts of the world, and they have sought a higher profile in the United Nations through China’s permanent seat on the UN Security Council and other multilateral organizations.

At a national meeting on diplomatic work in 2004, China’s President Hu Jintao reiterated that China will continue its ‘independent foreign policy of peaceful development,’ stressing the need for a peaceful and stable international environment, especially among China’s neighbors, that will foster ‘mutually beneficial cooperation’ and ‘common development.’60 This policy line has varied little in intent since the People's Republic was established in 1949, but the rhetoric has altered in its stridency to reflect periods of domestic political upheaval.

A central issue in China’s foreign policy during the last 20 years (1990–2010) has been to ensure that China can get raw materials and energy to fuel its rapid economic growth, wherefore it has been active in particular in resource-rich developing countries.
3
The Institutional Environment of India

The institutional environment comprises the regulative, the cognitive, and the normative dimensions. The regulative dimension determines the ease of conducting business activity in a country; the cognitive dimension refers to taken-for-granted practices as they pertain to foreign investors; while the normative dimension pertains to the dominant values and beliefs extant in a given country. In this chapter we will analyze the institutional environment of India. We begin, first of all, with the regulatory dimension, followed by the cognitive and the normative dimensions.

a) Regulatory dimension

The regulatory dimension is an important component of the environment within which business firms operate. It is indicative of the degree to which the environment is favorable for the business, be it a local or foreign-owned company. A favorable regulatory environment is likely to be characterized by an absence of over-regulation. The rules that govern a firm’s activities are also likely to be fairly transparent and implemented in an effective and an efficient way. In the event of a dispute or a conflict there will exist an independent and an impartial judiciary that will resolve the conflicts in a timely way. Most fundamentally, a favorable regulatory environment means that the costs of negotiating a transaction and resolving disputes in a country are low. It is to be assumed that if such costs are low, the volume of business activity is likely to be high.

At the onset of independence in 1947 the Indian economy was in dire shape. The economy was largely stagnant with a dismal growth rate during the first half of the twentieth century. Gurcharan Das points out
that during the period 1900–50 economic growth was 0.8 percent per year; as the population grew at the same rate there was no increase in per capita income.\textsuperscript{1} The industrial base was developed only to a limited extent as the colonial government had little incentive for helping India to industrialize.\textsuperscript{2} The country had also undergone the process of partition, which led to the creation of Pakistan. This too was a traumatic process in which a large number of people were killed. These were the circumstances in which Jawaharlal Nehru, India’s first prime minister assumed power. Nehru had studied at Cambridge and was much influenced by socialistic ideals. The emergence of the Soviet Union as a major power at this time provided a role model for India to follow. Indian development strategy was based on the government playing a leading role in the development of the industrial sector. The public sector was emphasized, as was heavy industry, with state monopolies emerging in sectors such as iron and steel, telecommunications, and mineral oil. The Indian policy makers also subscribed to the view that the country should strive for self-sufficiency and not be overly dependent on interactions with the rest of the world. A supposedly major advantage to this strategy was that India would no longer be at the mercy or the whim of the colonial powers as had been the case during the colonial rule.\textsuperscript{3} In other words, economic independence would lead to political independence.\textsuperscript{4} Interestingly enough, this strategy of the government playing a major role in the Indian development process and an emphasis on self-sufficiency was, in the first instance, supported by Indian business leaders.

**(i) Evolution of the Indian regulatory environment**

In the early years of the post-independence era the state and the business class had reached a compromise of sorts.\textsuperscript{5} This compromise was called into question when more draconian controls were imposed by the government from the mid-1950s onwards. The Industrial Policy Resolution of 1956 was decidedly less favorable towards business activity than the one that was adopted immediately after independence. This resolution enhanced the role of the public sector and did not avow nationalization against the private sector.\textsuperscript{6} The government at this time also adopted the policy of industrial licensing, under which it became obligatory for firms to seek permission from the government before they could operate in a specific industry. For every license the government specified the maximum amount of product that a company could produce. As Nirmalya Kumar (2009) notes ‘companies needed licenses for everything – from setting up a business and expanding capacity to
laying off workers and closing down a factory.’ This has come to be known as the ‘license cum quota raj.’ This no doubt gave the government considerable potential power over the private sector but, as Arvind Pangariya notes, this regime was not nearly as rigid in implementation in the early years as it became in the latter years.

Nehru’s daughter Indira Gandhi took over the premiership in 1966 following the unexpected demise of the then Indian Prime Minister Lal Bahadur Shastri. She inherited a financial crisis at that time, which led to the devaluation of the Indian rupee. The Indian business community was averse to the devaluation, as it would enhance the costs of the imported inputs. Mrs Gandhi and the Indian government were also operating on the assumption that the devaluation would lead the World Bank to give India non-project aid of US $900 million for several years. However, this did not occur due to the opposition of the then US president Lyndon Johnson, who was unhappy with the country because it had refused to support the Vietnam war. As Pangariya notes (2008:50) ‘The entire experience strengthened the socialist convictions of Mrs Gandhi and reinforced the sentiment that the United States was not a reliable ally.’ There was also the added domestic political consideration of consolidating Mrs Gandhi’s position as prime minister by moving against a group in the Congress party known as the syndicate, which was favorable to large Indian corporations. It is therefore not surprising that shortly thereafter Gandhi undertook a drastic reorientation of Indian industrial policy that would attack not only Indian firms but also foreign-owned firms operating in India at that time.

The Indian government introduced a wide range of regulatory measures at this point in time. Private sector firms in the banking, insurance, coal, wheat, and in a significant portion of the steel industry were nationalized. Even noted Indian industrialists such as G. D. Birla or J. R. D. Tata had difficulties in dealing with the government. The draconian Foreign Exchange Regulatory Act (FERA) was introduced in 1973, which required all multinational corporations to dilute their equity holdings from 51 percent to 40 percent. Companies such as Coca-Cola, IBM, and Shell were to leave India following the introduction of FERA. Foreign investment inflows were also to decline in the post FERA period. Consider the fact that the number of firms entering India annually during the period 1968–79 was 37, whereas in the early 1960s it was 101. The regulatory restrictions imposed on the Indian economy at this time had far-reaching and negative consequences. As Panagriya (2008: 76) notes ‘The policies put in place during this period created institutions and vested interests in both private and public sectors that
made the subsequent liberalization that much more difficult.'13 As he points out the Indian government is still struggling to privatize banks and public sector units after nearly two decades of reforms. These policies also ran in opposition to the governmental idea of fostering a more equitable distribution of income.14 The notion that the expansion of business houses would lead to wealth concentration overlooked the notion that such expansion might also generate employment for the poor. Similarly, the creation of reservations for the small-scale sector meant that but for the smallest firms, no other firms could enter this sector to manufacture labor-intensive products. A major consequence of this policy was that India could not compete on the world market for these types of products. India surrendered a potential advantage in this regard to firms from East Asia that were able to create many millions of jobs.15 The Indian economy grew at an abysmal rate of 3.5 per cent and with the population increasing at 2.2 per cent till the early 1980s, annual per capita income was increasing by a mere 1.3 per cent.16 An annual growth rate of 3.5 per cent also came to be pejoratively described as the 'Hindu rate of growth.'

The late 1970s and early 1980s marked the beginning of a new phase of Indian development. It was now clear that the imported substitution strategy which emphasized self-sufficiency had by now run its course. The government now began to shift direction and ease the constraints that were hampering business. Restrictions on large businesses to expand were diluted; import restrictions were eased; and, as the Indian software sector began to grow, the government invested in the establishment of software technology parks, which facilitated their growth and expansion. This liberalization occurred in a context where there was substantial domestic opposition among the Indian corporate sector to trade liberalization. These companies had become used to operating in a protected environment and were in no hurry or desire to operate in a liberal trade regime.17 This internal opposition to reforms was compounded by the weakness of the Congress-led Rajiv Gandhi government, which became embroiled in a corruption scandal involving a defense contract with Bofors of Sweden.18

The major regulatory reforms began in 1991 when India was confronted with a severe balance of payments crisis and had only two weeks of foreign exchange reserves left to finance imports. No doubt, this concentrated the minds of the technocrats in the Indian government. The urgency of reforms was further accentuated by the collapse of the Soviet Union and the growing emergence of China as a major player in the world economy. It is perhaps also the case that given the
experience of 1960–80, the technocrats had also come to the realization
that liberalization was the only way forward. The reforms that were
undertaken at this time encompassed industrial delicensing, the lower-
ing of tariff and non-tariff barriers, and the removal of the FERA, which
allowed multinational firms to automatically gain 51 per cent equity in
their ventures in India (but for a few sectors such as defense, telecom,
insurance and so on). These reforms have begun to produce results.
Poverty levels have begun to decline in India, the country’s growth rate
has accelerated, India’s reputation as a destination for foreign direct
investment (FDI) has been enhanced, and Indian firms that hitherto
operated within the confines of their borders are now engaged in an
aggressive internationalization strategy. Consider, for example, the case
of Indian business firms. During the licensing regime the Tatas were not
allowed to manufacture cars. But subsequent to delicensing, Tatas have
produced Indica, which has become one of India’s most popular cars.
They have also bought companies such as Rover and Jaguar to enhance
their ability to compete globally in this sector. In addition, they have
come out with Nano, the cheapest car in the world.

Although the regulatory reforms have no doubt given a much-needed
boost to Indian growth, the reform process remains far from complete.
Labor laws need much revamping – under the current provision any
company employing more than 100 workers needs governmental
permission before it can sack a worker. Such permission may not be
easily granted and even if the company gets it, it is likely to take a lot
of time. As Mukherjee (2009) notes ‘Industry adjusts to regressive labor
laws by subcontracting its commercial operations to smaller units that
escape labor laws and by increasing the capital intensity of produc-
tion.’ This is surely counterproductive, in that if poverty levels are to
decline employment must be found for the work force. Das (2006) gives
the interesting example of an employee who was fired by a company
for sleeping on the job but whose final dismissal was confirmed only
17 years later by the Indian Supreme Court! It has also been pointed
out that even though Indian firms are now free to invest in any sector,
they still require state and governmental clearances on a wide variety
of issues such as land labor, environment, and so on. If this is difficult
for a local Indian firm, just imagine how challenging it might be for a
foreign investor seeking to invest in the country.

(ii) Problematics of economic reform in India

Although India is no doubt in the process of transforming itself from
an inward to an outward oriented economy, it faces considerable
challenges in doing so. While the pace of reforms have picked up since 1991 and it is unlikely that they will be reversed, the Indian state still faces challenges in ensuring that the country is able to derive the maximal benefit from these reforms. In the sections to follow we will discuss some of the challenges that the Indian government faces in deepening the reform process and the implications for the negotiating process.

Implementation problems

A major problem is effective implementation. There are two components. First, the government may wish to institute a new policy but may find it extremely difficult to get it approved. Alternatively, a policy may already exist but has not been implemented effectively. Many scholars have noted that policy implementation remains a major problem in India. Consider for example the comment by Arun Shourie, a former minister in the Indian government: ‘Every step in getting a reform through is a real tussle. Reaching the next stage is often just a matter of chance. And even when a reform is proceeding, it is liable to take a very long time.’ Effective implementation is impeded by a wide variety of factors. Shourie suggests that as the power of the center has waned, it has had to rely on coalitions to prop up the governments. The coalition partners are therefore able to derive considerable power and put pressure on the party in power to block proposals that they do not approve of. This is compounded by the culture of adversarial politics that is ever so present in India. As Shourie (2009) notes ‘In India, there is a consensus in practice – so that whenever a group is in office, wherever it is in office it attempts to do the same sort of things. But when it is in opposition, where it is in opposition, it tries to block the same measures.’

Although the license-cum-quota raj is now gone, Shourie makes the point that the business class still seems wedded to it. They support liberalization in all sectors except for the one where they come from. As he notes ‘The core competence of many a business remains the ability to manipulate ministers and civil servants.’ Other problems that he notes are the fact that the beneficiaries of reforms are often diffused while the losers are much more concentrated and therefore have the ability to bring much stronger pressure on the government to block reform. A further issue is that the issue of implementing reforms is not simply a matter for the center – the states also have their own sets of responsibilities. However, as Shourie points out, the states are no better than the center in implementing reforms. Finally, the center has not been able to reward those states which are pursuing a pro-reform agenda. The problem is that the center is often a coalition and there
are pressures from the coalition partners to maintain the balance. One of the unintentional consequences of this is that often states that are not well governed get the greatest amount of funds. An additional contributing factor to ineffective policy implementation is the role played by the bureaucracy. Bureaucrats face little incentives to behave or act innovatively, and the constant infighting between different bureaucratic agencies no doubt compounds the problem. Das (2006) also highlights the bias that exists in the Indian mind towards thought as opposed to action, which may also be a further contributing factor, as also is the lack of training in implementation by Bureaucrats.

A further problem in the reform process has been highlighted by Varshney (2007), who suggests that many of the first-generation reforms that have been enacted so far (trade liberalization, abolition of industrial licensing, and so on) have directly impacted or benefitted the elite, and for this reason have created dissatisfaction among the lower masses. The masses think that reforms have not benefited them. This perception may have its roots in the fact that inequality is rising in India. The middle and the upper-middle classes seem to have benefitted more and while inequality in India is less than in China it is still problematical. Consistent with this, a number of commentators have raised the issue about the sustainability of growth giving this increasing inequality. Varshney contends that the second-generation reforms in the nature of privatization of public sector firms, reduction in fiscal deficits, shifts in agricultural policy, and a hire and fire employment policy, are more difficult for the government to implement given that they have a direct impact on the masses. As Varshney (2007: 4) notes ‘The electoral consequences of this likelihood has meant that Indian politicians have proceeded gingerly on these deep reforms, embracing those that directly affect the elite.’ Although the deep reforms may no doubt be essential for sustaining the country’s long-term growth potential, the problem is that in the short term these reforms may impose costs on the masses and thus have the potential of creating an electoral backlash. As Varshney (2007: 5) notes ‘it is now customary to argue that India has a strong consensus on weak reforms.’

The weakness of the state in implementing reforms has a number of implications for foreign investors in seeking to enter the Indian market. It suggests, first of all, that the Indian state may lack credibility in conveying its intentions. The government may be committed to economic reforms but if it is unable to effectively implement its policies the signals for foreign investors will not be convincing. A good example of this is in the power sector, where in the 1990s the government committed itself
Corruption

The license cum quota raj that became an intrinsic component of the import substitution policy followed by India was the immediate precursor to the emergence of corruption. Under the system a close nexus emerged between the bureaucrats, industrialists, and the politicians. Gaining access to licenses, foreign exchange, and/or other favors required for conducting business activity necessitated the payment of money by the industrialists to the relevant parties concerned. Corruption is of course not unique to India but as Pawan Varma notes ‘What is unique is its acceptance and the creative ways in which it is sustained. Indians do not subscribe to antiseptic definitions of rectitude, as are common in the Scandinavian countries. Their understanding of right and wrong is far more related to efficacy than to absolutist notions of morality.’

Corruption may be both pervasive and arbitrary. The pervasiveness of corruption refers to the extent to which corruption is widespread in a country, whereas the arbitrariness refers to the degree to which there is ambiguity over whether the bribe will yield the desired result. In environments where multiple actors may demand bribes, and/or an environment which is less organized, foreign investors may face unpredictability as to the impact of corruption. It has been noted that corruption is both pervasive and arbitrary in India. This no doubt increases
the transaction costs of doing business in a country. Heston and Kumar suggest that India could achieve a higher rate of growth if corruption and corrupt practices could be restrained. Yet, this seems problematical for a wide variety of reasons. The authors suggest that Indian bureaucracy has retained within itself a large volume of discretionary powers, which provide incentives for corruption. The corporate sector is not particularly different. As they note ‘It is common to manipulate accounts and conduct transactions off the books to evade taxes and generate black money.’ Political corruption is equally prevalent in India. In large part this is due to the newer politicians who ‘consider politics a business of making a fortune through acts of corruption and not a calling to a public service. If it takes a serious crime to get there, so be it’. Consider, for example, the observation by Tripathi that some members of parliament have seen their assets increase by 400–500 per cent over the past five years. Jenkins (2006), citing the work of Pratap Mehta, suggests that corruption has a perverse sort of legitimacy in that it has become a way of enhancing social mobility in a country that remains socially stratified. ‘Democracy, Development, and India’s Struggle against Corruption’, Public Policy Research.
The Institutional Environment in China

The regulatory environment

The regulatory dimension is an important component of the environment within which business firms operate. In this chapter we look at the three aspects of the institutional environment in China: the regulatory, the normative and the cognitive aspects. In particular a comprehensive elaborations of the normative and regulatory aspects are presented and discussed. The Chinese holistic approach and the dynamic economy are emphasized as a key to understanding Chinese negotiating behavior.

Evolution of the Chinese regulatory environment

As mentioned in Chapter 2 China was one of the most developed countries in the world until the 1820s, despite the fact that China began to be inward looking already around 1500, often symbolized by building the Forbidden City in Beijing. The Chinese government was so self-confident in its own superior position during the end of the eighteenth century that it asked representatives of the British Empire to bring gold when it sent convoys of ships to China to trade silk, tea, and other traditional Chinese commodities. China did not know that the industrial revolution in Europe was changing the face of Europe.

During the early nineteenth century the British Empire managed to establish opium trade with China because Qing control over the country had weakened. The opium trade was the core of the conflict between the British Empire, which desired to continue its opium trade, and China which tried to enforce imperial edicts prohibiting the addictive drug. The Opium War erupted in 1840 but China lost and Hong Kong, among other areas, was ceded to Britain in 1842 under the Treaty of Nanking.
After China lost the Opium War unequal treaties between Western powers, such as the United States, the United Kingdom, France, and Germany, but also including Japan and Russia, were signed against China’s will. China was never colonized as a country, like India, but smaller pockets became foreign concessions.

During the period from 1820 to 1949 China was characterized by weak governments and strong foreign powers that could set up their own regulatory systems in the areas they had occupied and were collecting taxes in.

After the Opium War foreign-invested companies became abundant in China, because Western countries won access to cities on China’s east coast, such as Shanghai, Tianjin, and Dalian.

The established settlements that attracted foreign companies to build their own buildings in some of the areas are still different from the surrounding Chinese architecture. In particular, in Shanghai the differences are very visible.

After Mao Zedong’s army succeeded in October 1949 the People’s Republic of China (PRC) was established and Mao made the famous declaration that the Chinese people had stood up. The new communist government nationalized all commercial equities during the early 1950s, including foreign equity. The nationalizations were completed in 1956.

As China’s Communist Party (CPC) was less corrupt and better organized than the Guomindang party, it received public support from a wide range of people. Some of the early reforms, such as the new marriage laws, were also popular in China. During the early 1950s when Chinese society was reorganized and production grew rapidly the Chinese people began to think that a more stable period had begun and many Chinese intellectuals residing overseas returned to the motherland. Production did take off and the regulatory system was re-established after the civil war.

From the late 1950s China underwent a series of disruptive socio-economic movements starting with the Great Leap Forward (1958–60) and continuing in the 1960s with the Cultural Revolution (1966–76). The Great Leap Forward resulted in an estimated 30–36 million deaths because of hunger as the peasants tried to build an industrial base instead of farming the land.

The 1960s in China was marred by Mao’s preoccupation with keeping himself in power, which was organized through an extreme left political line. During the Cultural Revolution many members of the cadre and intellectuals were persecuted because reminiscences from the old society should be erased according to Mao. From 1966–9, during the height of the Cultural Revolution, industrial production almost came to
a halt, and schools and universities were closed down. During the whole period of the Cultural Revolution members of the cadre were send to the countryside for so-called re-education through learning from the peasants. Untrained so-called barefoot doctors took over in the health sector, while educated doctors were sent to the countryside. If this ultra-leftist line had been continued it would have been devastating for China, as knowledge was looked down upon and eradicated if possible.

With the death of its first generation Communist Party leaders such as Mao and Zhu De, the PRC began implementing a series of political and economic reforms advocated by Deng Xiaoping that eventually formed the foundation for mainland China’s rapid economic development.

After the Gang of Four was arrested in 1976 the political line changed officially in December 1978 during the third plenum of the eleventh Central Committee. Instead of focusing on being revolutionary and red, the CPC turned to so-called socialism with Chinese characteristics. Despite its official stance of socialism, the ‘socialist market economy’ is often described as free-market capitalism by Western observers. In reversing some of Mao’s ‘extreme-leftist’ policies, Deng argued that a socialist country and the market economy model were not mutually exclusive. While asserting the political power of the party itself, the change in policy generated significant economic growth.

Deng is supposed to have said that it does not matter whether the cat is black or white as long as it catches mice. After 1978 efficiency became more important than CPC rhetoric and the political system stressed the four modernizations again. These were modernizations in the fields of agriculture, industry, national defense, and science and technology as they originally had been set forth in the early 1960s before the Cultural Revolution.

The system in China was shaken during the days of the Tiananmen Square protests of 1989. After the protest was brought to an end, Jiang Zemin was appointed general secretary of CPC and as part of Jiang’s legacy, the CPC ratified the ‘Three Represents’ into the 2003 revision of the Party Constitution as a ‘guiding ideology,’ encouraging the party to represent ‘advanced productive forces, the progressive course of China’s culture, and the fundamental interests of the people.’

The insistent road of focusing almost exclusively on economic growth has led to a wide range of serious social problems. The CPC’s ‘fourth generation’ of leadership under Hu Jintao and Wen Jiabao, after taking power in 2003, attempted to reverse such trends by bringing forth an integrated ideology that tackled both social and economic concerns. This new ideology is known as the creation of a Harmonious Society.
Economic development

After it was decided to focus on economic development in China in 1979, the country has maintained a double digit growth rate for 30 years and its per capita income has grown from less than $200 in 1980 to $3700 in 2010. Despite the fact that the Gini coefficient (a measure of economic equality) rose to 0.46 in 2006 more than 1 million peasants have been lifted out of poverty per month in the last decade or so. During the period altogether more than 300 million have escaped poverty.

Since 1978, China began to make major reforms to its economy. The Chinese leadership adopted a pragmatic perspective on many political and socioeconomic problems, and sharply reduced the role of ideology in economic policy but the central role of the communist party in creating political and social stability, economic productivity, and public and consumer welfare were considered paramount. In these years, the government emphasized raising personal income and consumption, and introducing new management systems to help increase productivity. The government also focused on foreign trade as a major vehicle for economic growth. In the 1980s, China tried to combine aspects of central planning with market-oriented reforms to raise productivity, living standards, and technological quality without exacerbating inflation, unemployment, and budget deficits. Reforms began in the agricultural, industrial, fiscal, financial, banking, price setting, and labor system but moved towards privatization and international cooperation in the 1990s and the first decade of this century.

Between 1995 and 2004, the number of state-owned enterprises decreased by 48 per cent. During the same period, Jiang and Zhu also reduced tariffs, trade barriers and regulations, reformed the banking system, dismantled much of the Mao-era social welfare system and forced the army to divest itself of military-run businesses. China joined the World Trade Organization (WTO) in 2000 after 16 years of negotiations and agreed to considerably harsher conditions than other developing countries. The reforms invoked discontent among some groups, especially laid-off workers of state enterprises that had been privatized.

The Hu Jintao administration reversed some of Deng’s reforms in 2005. Observers note that the government adopted more egalitarian and populist policies. It increased subsidies and control over the health-care sector, and adopted a loose monetary policy, which lead to the formation of a US style property bubble in which property prices tripled. The privileged state sector was the primary recipient of government investment, which under the new administration promoted
the rise of large ‘national champions’ that could compete with large foreign corporations.¹¹

**Economic reform policy in China**

The main stage of reform in the late 1980s and 1990s, involved the privatization and contracting out of much state-owned industry and the lifting of price controls, protectionist policies, and regulations, although state monopolies in sectors such as banking and petroleum remained. The private sector grew remarkably, accounting for as much as 70 per cent of China’s GDP by 2005, a high figure compared to many Western nations.¹² Privatization is a long ongoing process in China that started in 1978; a strong movement towards privatization was initiated around 2000 and by the end of March 2010 there were 7.56 million private-owned enterprises (comparing to 1.76 million at the end of 2000). Official statistics show that in 1978, the first year of China’s economic reforms, 140,000 people were employed by small businesses. The number of small businesses, however, was not listed before 1981, when the administration of industry and commerce was established and took charge of registration. 1.8 million businesses were registered in 1981, and this number grew to nearly 25 million in 2005.¹³

There are still 200 large state companies in China. They are mainly in utilities, some in heavy industries and some in resource industries. Traditionally, this is where governments have invested.

The goal of China’s economic reform was to transform China’s stagnant, impoverished planned economy into a market economy capable of generating strong economic growth and increasing the well-being of Chinese citizens.

Since China joined the WTO in 2000 trade has increased from under 10 per cent of GDP to 64 per cent of GDP in 2010. China is considered one of the most open large countries in the world. By 2005, China’s average statutory tariff on industrial products was only 8.9 per cent.¹⁴

China’s economic growth since the reform has been very rapid. Economists estimate China’s GDP growth from 1978 to 2005 at 9.5 per cent a year. Since the beginning of Deng’s reforms, China’s GDP has risen tenfold.¹⁵ The increase in total factor productivity (TFP) was the most important factor, with productivity accounting for 40.1 per cent of the GDP increase, compared with a decline of 13.2 per cent for the period 1957 to 1978 – the height of Maoist policies. For the period 1978–2005, Chinese GDP per capita increased from 2.7 per cent to 15.7 per cent of US GDP per capita. Per capita incomes grew at 6.6 per cent a year.¹⁶ Average wages rose sixfold between 1978 and 2005, while
absolute poverty declined from 41 per cent of the population to 5 per cent from 1978 to 2001. Some scholars believe that China’s economic growth has been understated, due to large sectors of the economy not being counted.

**Foreign direct investments**

China began experiencing foreign investment from overseas Chinese in the southern part of Guangdong near Hong Kong in 1978. In 1979 the first law regarding FDI was passed in the People’s Congress and four special economic zones were set up. China being ruled by a one-party system has an autocratic system, where a few members of the standing committee can decide to change the country’s policy.

This autocratic system seems to present some benefits for foreign business because of its predictability. A one-party rule election will not create political changes and the government has followed a direct line of opening more and more up to the outside world since 1979 except for the period of the Tiananmen protests in June 1989.

After Deng’s southern trip at the start of 1992, foreign business has conveyed China to the ‘shop floor of the world.’ During the last 15 years China has received between US $60–100 billion in FDI annually. By the end of 2009, China approved a cumulative of 683,297 foreign investment projects, with actual utilized overseas FDI amounting to US $973 billion. The amount is extremely large and no developing economy has ever received such a huge amount of FDI. Cheap labor and a potential huge domestic market have made China the preferred investment destination of foreign companies.

**Corruption**

Other pressing problems include corruption, which affects every level of society. In an index published by Transparency International INDEX China receives a score of 3.5, slightly higher than India (less corrupt) but a position that ranks it only in the middle of the world’s countries. Corruption is an integrated part of the Chinese society and the autocratic system, because cadres are appointed from above and are only responsible to their superiors. Corruption has increased during recent years and foreign business is more and more being met with requirements of bribery; various entities in China cannot avoid disclosing the commonness of corruption in the country. In particular, large international events such as the ‘World Expo 2010’ held in Shanghai for half of the year, disclosed the extent of corruption in China. Previously such events seemed to be protected against corruption, but this is not possible any longer.
Chinese society still seems highly effective despite the level of corruption, which can partly be ascribed to the extremely focused mindset of the Chinese people. One gets things done when paying bribes.

**Normative dimension**

The sections about the normative dimension describe the cultural system in China and how this impacts on the regulatory system.

China is the only existing non-religious civilization in the world and the only civilization that does not have a creation myth. The fact that the Chinese people should not relate themselves to a God has brought the individual, or the group of individuals, into a central position in China.

The concept of Yin-Yang is one of the few concepts shared by different schools throughout the history of Chinese philosophy. Just as with many other Chinese philosophical notions, the holistic influences of Yin-Yang are easy to observe, but its conceptual meanings are hard to define. In traditional China philosophers were not concerned with rigorous definitions. Despite differences in the interpretation, application, and appropriation of Yin-Yang, three basic themes underlie nearly all deployments of the concept in Chinese philosophy: (1) Yin-Yang is the coherent fabric of nature and mind, exhibited in all existence; (2) Yin-Yang is interpenetrates between the waxing and waning of the cosmic and human realms; and (3) Yin-Yang is a process of harmonization, ensuring a constant, dynamic balance in all things. The dominant values and beliefs in Chinese society have intimately, although not exclusively, been shaped by Yin-Yang philosophy (see Figure 4.1).

Yin-Yang is a symbol of both holism and change. One part of the figure illustrates the moon or dark (yin) and the other part illustrates the sun. After darkness the sun will rise and after light it will be dark again. More importantly the two are intertwined. Within the dark area there is a white spot and vice versa.

Yin-Yang is a classification of relations that are continually in flux, each growing out of the other. Any giving subject might be designated yin in one set of relations and yang in another.²⁰

Yin-Yang balance is the Chinese metaphysical system of both ontology and epistemology. As ontology, it assumes ontological reality as interdependent, interactive, and interpenetrative, while it attempts, as epistemology, to make sense of these three ontological natures within a holistic and dynamic cognitive system.²¹ The most striking showcase for Yin-Yang balance is in the field of Chinese medicine such as the cases of ‘five-elements’ (fire, earth, metal, water, wood) and acupuncture practice.²²
Confucianism is a Chinese ethical and philosophical system developed from the teachings of the Chinese philosopher Confucius (551 BC–478 BC). In addition from 500 BC in Confucianism the position of women was low, which is something that characterizes Chinese society throughout history.\textsuperscript{23}

Confucianism is a complex system of moral, social, political, and philosophical thought that has influenced the culture and history of China throughout its history. Confucian philosophy is often promoted by the state to some extent because it sets out clear relations between people in a hierarchical order. Specific duties are prescribed to each of the participants in the sets of relationships. Such duties are also extended to the dead, where the living stand as sons to their deceased family. This has led to the veneration of ancestors and the family, which is the most important cultural institution in China.

The governor of She told Confucius: ‘There is a straight person in my village. He gave evidence against his father, who had stolen a sheep. Confucius answered: The straight people in my village are quite different. Fathers cover up for their sons and the sons cover up for their fathers.’\textsuperscript{24}

The quotation shows that harmony is more important than pursuing the truth in the traditional Chinese world-view, which is opposite to the Western view.

In the family, members should protect each other. At the same human beings are teachable, improvable, and perfectible through personal and communal endeavor, especially self-cultivation and self-creation.
An important idea is the cultivation of virtue and the development of moral perfection. Confucianism holds that one should give up one’s life, if necessary, either passively or actively, for the sake of upholding the cardinal moral values of benevolence and righteousness.

In Confucianism the term ‘ritual’ was soon extended to include secular ceremonial behavior, and eventually referred also to the propriety or politeness that colors everyday life. Rituals were codified and treated as a comprehensive system of norms. Confucius himself tried to revive the etiquettes of earlier dynasties and after his death he was regarded as a great authority on ritual behaviors.

It is important to note that ritual behavior has developed a specialized meaning in Confucianism where the acts of everyday life are considered ritualized. Rituals are not necessarily regimented or arbitrary practices, but the routines that people often engage in, knowingly or unknowingly, during the normal course of their lives. Shaping the rituals in a way that leads to a content and healthy society is one purpose of Confucian philosophy.

The Chinese character for ‘rites’, or ‘ritual’, previously had the religious meaning of ‘sacrifice’. Its Confucian meaning ranges from politeness and propriety, to the understanding of each person’s correct place in society. Externally, ritual is used to distinguish between people. Its usage allows people to know at all times who is the younger and who the elder, who is the guest and who the host, and so forth. Internally, rites indicate to people their duty amongst others and what to expect from them.

Internalization is the main process in ritual. Formalized behavior becomes progressively internalized, desires are channeled, and personal cultivation becomes the mark of social correctness. Though this idea conflicts with the common saying that ‘the cowl does not make the monk’, in Confucianism sincerity is what enables behavior to be absorbed by individuals. Obeying ritual with sincerity makes ritual the most powerful way to cultivate the individual.

‘Respectfulness, without the Rites, becomes laborious bustle; carefulness, without the Rites, becomes timidity; boldness, without the Rites, becomes insubordination; straightforwardness, without the Rites, becomes rudeness.’

Relationships are central to all strains of philosophy in China including Confucianism. Particular duties arise from one’s particular situation in relation to others. The individual stands simultaneously in several different relationships with different people: as a junior in relation to parents and elders, and as a senior in relation to younger siblings, students, and others.
While juniors are considered in Confucianism to owe their seniors reverence, seniors also have duties of benevolence and concern toward juniors. This theme of mutuality is prevalent in Chinese culture to this day.

‘Filial piety’ is considered among the greatest of virtues and must be shown towards both the living and the dead. The term ‘filial’ (meaning ‘of a child’) characterizes the respect that a child, originally a son, should show to his parents. This relationship was extended by analogy to a series of five relationships (relationship of ruler to ruled, father to son, husband to wife, elder brother to younger brother, and friend to friend, please refer to section 2.7). The last relationship is the only relation that is not necessarily hierarchical.

Loyalty is the equivalent of filial piety in a different setting. It is particularly relevant for the social class to which most of Confucius’ students belonged, because the only way for an ambitious young scholar to make his way in the Confucian Chinese world was to enter a ruler’s civil service. Like filial piety, however, loyalty was often subverted by the autocratic regimes of China.

Social harmony, which is the goal of Confucianism, therefore results in part from every individual knowing his or her place in the social order, and playing his or her part well. When Duke Jing of Qi asked about government, by which he meant proper administration so as to bring social harmony, Confucius replied: ‘There is government, when the prince is prince, and the minister is minister; when the father is father, and the son is son.’ The Confucian society functions best with the supervisor being supervisor and worker being worker, and where both try to enhance their own performances as much as possible. The worker should not try to become supervisor directly, but only through outstanding performance.

The importance of harmony and loyalty is also shown in Mencius: ‘When being a child, yearn for and love your parents; when growing mature, yearn for and love your lassie; when having wife and children, yearn for and love your wife and children; when being a staffer, yearn for and love your sovereign.’ The idea is still to fulfill the positions one has.

The importance of the concept or smooth changes

That change is a central term in Chinese culture can appear paradoxical in light of the above description of Confucianism, but without change harmony cannot be kept.

The term ‘smooth changes’ has a deep historical root in the Chinese mindset. It derives from the ancient Chinese Book of Change, which
was written more than 3000 years ago and is considered the oldest of the ancient Chinese classics. The *Book of Changes* is, as its name indicates, a book on mastery of change-building with the holistic approach depicted in the Yin-Yang section.30

The generative structure of change and smooth represents the Chinese dialectic way of thinking. Smooth is the result of change and change is a precondition of becoming smooth. There is a dialectical and dynamic relationship between the two words. Only interactions taking place between these two forces can constitute the path to good management relations. The precondition is a desire for a positive outcome depicted in ‘smooth’, wherefore ‘change’ should be subordinated to ‘smooth’, while at the same time, ‘change’ also governs ‘smooth’. If ‘smooth’ fails, ‘change’ will lose its significance. More importantly, as described in the Yin-Yang section, relations between the two are interdependent, interactive, and interpenetrative wherefore the two cannot be separated.

Smooth changes are a central concept of traditional Chinese philosophy. For example in Taoist philosophy it is said, ‘change is threefold: There is the change of heaven, the change of sages, and the change of mind.’31 According to Chinese philosophy the change of heaven can be seen in the four seasons. The change of sages can be seen in their adaptations to change and their capability for innovations with changes. The change of mind can be seen in the ‘way’ of transformation, if the ‘way’ is put into practice it will make people feel ease in their mind. The word ‘change’ is not only used repeatedly in the *Book of Change*, but is also used in people’s daily life in modern times. The connotation of change has been internalized as time went on, and from change to change of heaven. ‘Change of heaven’ means a new political system in Chinese tradition. Change modifies and transforms itself and differs in the way it appears. All of these meanings stress the important qualitative aspects of change. One of our interviewees revealed his thinking about change by saying that everything in the universe would change except that change itself does not change. In other words, people should follow the law of change and master the practice of this law.

The dialectical universal view of the *Book of Change* stresses that things will develop with different forms and stages in the world such as ‘strong and weak,’ ‘strength and decline’ going along or with each other in a cyclical move.

Smooth changes are associated with appropriate timing. The appropriate time seems to suggest when accomplishing something has to be done, that is the time when it becomes possible or necessary due to a suitable configuration of conditions. It may also suggest that the
appropriate timing of action and inaction and harmonization with time by active or passive adaptation to the present situation in order to proceed along the optimum line of development has been reached. We can discern that time plays a very important role in smooth changes.

‘Relation is a foundation when two parts make a deal. If there is no relation then there will be no deal, no matter what you do.’\textsuperscript{32} The statement should be understood through the Chinese view of relational management of Chinese smooth changes.

The Chinese show a higher propensity to attribute an action to situation-specific circumstances, whereas Westerners are more prone to use personal dispositions as explanation.\textsuperscript{33} In addition Michael Morris and Mike Peng state that where Westerners see an individual as leader of a group then the Chinese tend to see a group following an individual.\textsuperscript{34}

We contend from numerous interviews with Western expatriates in China conducted by one of the authors the last ten years that the Chinese approach to change has caused as much puzzle in the mind of expatriates if not more than networks, maybe because the phenomenon of change has not been studied to the same extent. In general Western expatriates emphasize the lack of finality in interaction and contract negotiations in China, which often create conflicts, but further thought or understanding of the condition that brings the lack of finality seems to be absent.\textsuperscript{35}

**Middle way**

‘Middle way’ conveys a dynamic concept of harmonious integration of opposites rather than a compromise between them as often understood in the West. Middle Kingdom, the traditional word for China, is a call for a country to maintain an integrated lifestyle by balancing the extremes, and not, as is often misunderstood, a hegemonic undertone of a country that considers itself to be superior to others. Ming-Jer Chen argues that ‘middle’ is a dynamic concept of harmonious integration of opposites rather than a reactive compromise between them.\textsuperscript{36} The Chinese believe that all things in the universe contain competing tendencies that must be balanced, opposite elements constitute an integrated whole. The concept ‘zhonghe’ literally means ‘middle way’ and ‘harmony’. In that sense, as pointed out by Chen, the middle-way philosophy embraces two opposing but interdependent ideas: holism and paradox.\textsuperscript{37}

**Holism**

Holism means that all things are interconnected and interdependent and interpenetrating each other, so that looking at things in isolation
does not make sense. As the saying goes ‘you find what you look for,’ meaning that when you look for relations you also find relations, which has strengthened the Chinese belief that one cannot understand a phenomenon in isolation.

Western thinking has been characterized by an analytical view that parses reality into independent objects and considers such ideas as the self and the other, life and death as a paradox; whereas the Chinese perspective will be that families have children to carry the family on and thereby overcome ‘death’. The Chinese world-view has traditionally embraced an integrative view of the world, which brings about the concept of holism, meaning that all things are inseparable from their opposite and relationships are interdependent. The self in China is considered to be an interdependent unit that is defined in relation to and by others. The character for ‘human’ ‘ren’ consists of the character for man and the character for two. Even more clear is the Chinese expression ‘ren zhi ren ye’. Translated it means that what constitute a person’s self is its interaction with others.

One of the authors has experienced Chinese thinking embracing an integrative view when advising Chinese students’ master theses. The Chinese tend to see the relation between the advisor and the student as interdependent. When a Chinese student obtains a high grade, he or she will tend to give a gift to the advisor. On the other hand when students of Chinese origin receive a poor grade, they tend to blame the advisor. One Chinese student who was dissatisfied with her grade called the advisor afterwards and said: ‘I did everything I was told to do.’ In the West we tend to look for own contributions, and few Western students will bother to think about their advisor as soon as their thesis is approved. Contrary to the Chinese, the Western students see themselves as clever when they get a good grade (independent self).

The idea of the self versus the other as interdependent is natural in traditional Chinese self-perception, meaning that individuals are expected to subordinate themselves to the group. A result of the interdependent self is a network-based society (described later in the chapter) and a result of the harmonistic interdependence was that debate was discouraged within the social groups. This is an issue that many Chinese still struggle with. You do not discuss with your friends but express agreement independent of whether you agree or not.

In China there is no tradition of posing so-called why questions. Traditionally in China, people were satisfied if things functioned and there was no need to understand why they did. This is something that Chinese medicine has tried to make up for in recent years by testing its
traditional medicine according to Western requirements in order to get
the products on the lists that are a precondition for patients to have the
medicine reimbursed in the West.

A result of the above-described attitude is that the Chinese are
extreme ‘doers’. When a Chinese person gets an idea, then he tries it:
if it works then he uses it, if not he discards it. Deng, who jump-started
the 30 years of Chinese hyper-growth, is well-known for his saying that
the Chinese ‘are grouping the stones to pass the river.’39 It indicates that
there was no big master plan behind the growth that has taken place
during the latest 30 years in China.

Another expression of the same is that Chinese children of a certain
age know more verbs than American children, while American chil-
dren know more nouns. The Chinese are action-oriented, while the
Americans are more analytically minded. Another expression of the
same is that when children are asked to pair three pictures consisting
of a cow, a dog, and a grass field, the American children tend to pair
the two animals, because they belong to the same category, while the
majority of Chinese children paired the cow with grass because the cow
eats grass.40

Paradox

The embrace of paradoxes is an integral component of the middle-way
philosophy. The Chinese see opposites containing within themselves
the seed of the other, yet forming a dynamic unity. This world-view
captures the Chinese view of paradoxes as an interdependent unity
constituting a whole.41 In Taoism neither opposite can exist without
the other. ‘The extreme of yin is yang and the extreme of yang is yin,’
said Confucius.42 The combination of yin and yang is the way of nature
and the seed of change. It signifies how Chinese philosophy seeks to
avoid simple polarizing of contradictions. Each force contains the seed
of its opposition and together they form an integrated whole. The
Chinese take a dialectical approach that retains basic elements of oppos-
ing perspectives rather than polarizing contradictions as in Western
thought.43

The notion of interdependent opposites is embedded in the Chinese
language. Many Chinese words consist of two characters that embrace
contradictory ideas. For example ‘many’ and ‘few’ means ‘how much’
when combined. Another example is the Chinese the word for ‘crisis’
(weiji). The first character means ‘danger’ and the second ‘oppor-
unity’. This takes us to what Chen calls paradoxical integration, or from
either/or to both/and.44 The idea that two opposites are interdependent
in nature and together form a totality contributes to paradoxical transcendence. In this framework the opposites in a paradox are not only intertwined in a state of tension, but in fact constitute a state of wholeness.

Interdependent opposites refer to entities that exist only within the concept of its other or find their definition only in terms of their opposite, such as dark and light.45

**Networks**

Chinese society is traditionally network-oriented according to the famous anthropologist and sociologist Fei Xiaotong. Where Western societies have organizations China has networks.46 The traditional Chinese society is built up by elastic networks. The relationship-focused mentality of the Chinese caused Fei (1992) to use the following metaphor ‘While Western society is represented by straws collected to form a haystack, Chinese society is represented by ripples flowing out from the splash of a rock thrown into the water (that is discrete categories of social relationships)’. Fei (1992) describes four key features of the networks.47

1. Networks are discontinuous and they center on the individual and have a different composition for each person. Because each person is the center of his or her network, Fei calls Chinese society egocentric or particularistic with a more modern concept.
2. Each link in a network is defined in terms of a dyadic social tie. These interpersonal ties are known in Chinese as guanxi. Each tie is strictly personal.
3. Networks have no explicit boundaries. The ties are pre-existing and therefore a person is called upon to ‘achieve’ the relationship by rising to the level of morality required by the specific tie. Moral obligation is a strong tenant in Chinese society, while laws have been frowned on.
4. The moral content of behavior in a network society is situation-specific. Embedded in a world of differentially categorized social relationships, people evaluate ongoing action by considering the specific relations among actors. What is considered moral behavior depends on the situation and on the social categories of the actors, rather than on abstract standards pertaining to autonomous individuals.

An example of this is mentioned by Chen48 where the son of one of the richest people in Hong Kong said that if he spent US$ 200 million
buying a company he did not need to ask his father, but if he sued somebody, however insignificant they may be, he would have to check with his father beforehand. In a network society, one can never know the disruptive effect such an action would have on one's network.

The core of the network is the family and the oldest male in the family is the leader. The concept of family is an elastic one. Concepts are not defined as in the West, but relations are. A Chinese scholar studying the oldest Chinese dictionary, the 2000-year old *Er Ya*, discovered that there are more than 100 Chinese nouns to express the different family relations, of which most have no correspondents in English.49

The family consists of concentric circles that are filtered into each other. Two brothers have the same parents, but not the same friends.

The fulfillment of one’s role comes from the very structure and dynamic of the relationships and the emphasis on belonging.50 In such a society vertical relations are conducted via an adoption of roles and expressing mutual dependence.

**Hierarchy**

Having established Chinese society as relationship focused, it is necessary to stress that all relationships are vertical. Fei (1992) characterizes Chinese society as a ‘differential mode of association’ or non-equivalent, ranked categories of societal relationships. In traditional China the most important relation in society was between father and son. A son shall respect and show obedience towards his father, who shall protect his sons. The relationship between husband and wife was less important, in the sense that men tend to spend even their spare time outside the home, as portrayed in many Chinese movies. If couples talked to each other they were often quarreling. In the Confucian hierarchical system, the wife should be submissive towards her husband, but the husband has obligations towards his wife. The relation between emperor and subject was modeled along the same lines. The subject should be loyal to the emperor, who should be kind to the subject. Somewhat ironically these relationships surfaced again under the Cultural Revolution, where many Chinese wore Mao emblems with the character for loyalty. The heart has roughly the same meaning in Chinese tradition that the brain has in Western.

The fourth relation is between older brother and younger brother, where the older brother should care for his younger brother. The younger brother should see his older brother as a role model. Relationships with daughters are not described but they would usually marry and move to their husband’s home. This is still the reason for many Chinese couples
wanting a son, because who would otherwise take care of them when they grow old?

The fifth relationship is between friends, and is characterized by trust and exchange of favors. As one of the authors do not believe that horizontal relations exist in China, there will also be at least some difference in the status of friends. An example that has nothing to do with family relations is that of a Chinese colleague who spent one year at Copenhagen Business School yet always called on of the authors professor or the respectful version of ‘you’ in Chinese.

Face
As described above the Chinese society is built on reciprocity, which pertains to all social relations. When Chinese help others they know that they can draw on that investment later, otherwise the recipient of a favor will lose face.51

One implication of a network society is the importance of face. The only constraint in your network is that you lose face if you do not live up to the requirements of the networks you are involved in. There are two words for face in Chinese language ‘lian’ which refers to the ethical aspect of one's personal behavior, that is behaving as a decent human being. Lian is something that is ascribed to a person by others rather than something one can acquire oneself. It is often translated as ‘moral’.

The other word for face ‘mianzi’ is the forefront of the head. The size of one's ‘mianzi’ is an indication of the degree of one's success. ‘Mianzi’ contributes to regulate behavior, for example showing aggression means a loss of face, which tallies with Confucian principles advising one to control one's emotions and behavior. Given that the Chinese do not wish others to lose face, they are reluctant to refuse anything openly or to say something that others do not want to hear. The Chinese tend to focus as much on giving face as causing others to avoid losing face, which is another reason that indirect communications are prevalent in China. Face can be protected, saved, and given by observing social rituals, such as following harmonistic behaviour and exchanging appropriate gifts in public.52

Focus53
The vast majority of cultural studies about China consider it to be a collectivistic society.54 The main characteristic of such societies is the interdependent self of the individuals.55 As mentioned by Tianshu Liu being emerged in collectivities all the time enhances one’s need for concentration and focusing.
Chinese people seem to be extremely good at concentrating and stay focused. At least part of the reason is that Chinese are socialized to the Confucian tradition of studying hard and keep disciplined. From entering nursery to graduating from universities they are living with others and typically several people in one dormitory. In the nurseries through schools to universities there are 60 in the classroom. More importantly, the Chinese stress the importance of the ability to focus. During a visit to China one of the authors asked a young girl why she was reading in the subway. The answer was that she should learn to concentrate. Probably what has impressed one of the authors most about the Chinese people is their incredible hard work attitude, strong will, ambitions, and belief in the future. They work in an extremely focused but pragmatic way, which makes it comparatively easy to create results.

Time perception
The Chinese are well-known for their long-term perspective in family-related issues. One of the authors’ Chinese mother-in-law took it for granted that that one of our daughters will buy our house sometime, and her thinking about the house is determined by this perspective. As mentioned earlier, China is the oldest existing civilization and as such has as strong retrospective orientation. In addition time is considered cyclical. Events are elastic and coexist rather than having a causal relation. A consequence of this is that Western logic, with its emphasis on cause and effect is not prevalent in China. The Chinese way of thinking is much more about synthesizing. Causation is not responsive but contextual, and to a high extent determined by the environment. A particle’s behavior is controlled by the force field in which it coexists with other particles.

Chinese stratagems
Lin Yutang (1989) joked that Confucius forgot to regulate the relation between strangers. In fact several books in Chinese tradition discuss the topic called the Chinese stratagems in Chinese, which describe how to lay plans to conquer the enemy. Strategems are neither strategy nor tactics, but encompasses the meaning of both. Several classic books describe these strategies. The best known is Sunzi’s *The Art of War*. Strategems can be described as the manipulation of various strategies. The book emphasizes that rather than resorting to absolute military force ‘subdue the enemy without fighting’ is more skillful. Sunzi’s book is not really about war and Tony Fang (1999) called it a book about ‘the art of non-war.’ A typical quote goes like this ‘Regard your
soldiers as your beloved children and they will follow you into the deepest valley.'63 Other quotes point in the opposite direction such as ‘All warfare is based on deception.’ The absence of moral universality becomes clearer in the 36 stratagems stemming from the Ming Dynasty (1368–1644) where one is urged to ‘loot a burning house,’ ‘hide a knife in a smile,’ or ‘kill with a borrowed knife’ meaning that one should make use of external resources for one's own gain.64

The main point is that when a culture like the Chinese does not subscribe to universalistic principles, the individual is not confined by anything when among strangers. As long as no one in one's network is included, any action is legitimate because you have no responsibility towards people you do not know. The context specificity becomes extremely important.

In addition to being flexible or facilitating smooth changes, the Chinese tend to focus on the counterpart. The curiosity of the Chinese makes them interested in how the counterpart thinks and perceives himself. An author of books about business negotiations ‘says that when he asks people in China why they buy his book he always gets the same answer, namely because they want to know their counterparts.

Cognitive dimension

In this section we describe the taken-for-granted aspects of the cultural and language elements of the Chinese institutional approach.

Chinese language

Another tenet that has had a long-term influence on Chinese mentality is the pictographic written language, which might have added to their holistic world view, although the relationship is interrelated.

Chinese is a language family consisting of dialects that are mostly mutually unintelligible to varying degrees.65 The Chinese language forms one of the branches of Sino-Tibetan family of languages. About one-fifth of the world’s population, or over one billion people, speak some variation of Chinese as their native language. Internal divisions of Chinese are usually perceived by their native speakers as dialects of a single Chinese language, rather than separate languages.

The Chinese orthography centers on Chinese characters, which are written within imaginary rectangular blocks, traditionally arranged in vertical columns, read from top to bottom down a column, and right to left across columns. Chinese characters are morphemes independent
of phonetic change. Thus the number ‘one’ is ‘yi’ in Mandarin, ‘jat’ in Cantonese and ‘chit’ in Hokkien, but all share an identical character.

In the Chinese writing system, the characters are monosyllabic, each usually corresponding to a spoken syllable with a basic meaning. However, although Chinese words may be formed by characters with basic meanings, the majority of words in Mandarin Chinese require two or more characters to write (thus making them polysyllabic) but have a meaning that is distinct from but dependent on the characters they are made from. Cognates in the various Chinese dialects that have the same or similar meaning but different pronunciations can be written with the same character. As the Chinese language consists of characters rather than an alphabet it is more time consuming and difficult to learn compared to western languages. The difficulty of the Chinese language may add to the Chinese tending to be more focused than westerners (see above).

The official name of China changed with each dynasty or with each new government – the imperial governments referred to themselves as the Empire of the Great Qing, Empire of the Great Ming, and so on. However, the common name remained as Zhōngguó, meaning the ‘center of civilization,’ which was used to refer to the late Zhou Dynasty.

One way to get an in-depth understanding of the Chinese mindset is by studying the central concepts in Chinese business-related vocabulary. It has long been known that language is a manifestation of people’s thought and at the same time is influenced by local cognitive systems. By developing a better understanding of indigenous concepts one can develop a better understanding of a culture – conscious or as well as unconscious. Based on such knowledge certain behavioral modes may become understandable.

Softer middle

It is essential for a good life to keep a balance by thinking about something negative when one is happy, and something negative when something unhappy takes place.

The Chinese tend to see balance in life as the softer middle. One should never go the extremes.

The strength of Chinese tradition comes primarily from immersing the self in the collective and using the energy of the group. The Chinese begin with a view of life, work, and community that is far more integrated than that of Westerners.

The Chinese are constantly building a better society exactly because they accept systems such as capitalism so easily and work with the
useable pieces. They do not talk much about an idealistic society; they just want to make progress, one step at a time. In the Chinese holistic mind everything is connected to everything else in such intricate ways that it often does not really matter where you start, because good and progress will spill over to what is next to it, and will grow depending on nature and destiny, the way that waters flow and the winds blow.

Attitude to foreign investments

The traditional inward-looking attitudes among the Chinese have led to some wariness towards strangers, and foreigners in particular. The attitude towards and trust in non-Chinese is almost in all aspects different from that of ethnic Chinese. The Chinese society is a low-trust society where people need to know each other in order to have the necessary interpersonal trust to conduct business or other activities. The clear distinction between the internal that is the Chinese and the external that is the non-Chinese results in a homogeneous society that is difficult for foreigners to penetrate.

As the Chinese political system does not allow people to express their political points of views it is difficult to know the attitude to the current development, where more than half of China's exports are conducted by foreign companies but inferring from what we know about Chinese culture the Chinese people will not be happy about this. One does hear dissatisfaction among employees in foreign enterprises and strikes have occurred in most companies, but only for a short period of time. The local government tends to support foreign businesses against workers who strike. Altogether this means that general anti-foreign attitudes are seldom displayed, but protest against a certain country, in particular Japan, does occur. On the other hand, local governments in China are competing for foreign investments, because the cadres get promoted if they can develop their region.
As discussed in the opening chapter, the institutional environment of a country is often influential in shaping the ease or the difficulty of the negotiating process. This, in turn, has important implications for the potential of value creation in a given environment. When the negotiating process is relatively less challenging, there is greater scope for value creation. We would also surmise that when the potential for value creation is high, the country’s rate of growth may also accelerate. India has been growing very rapidly in recent years and is now often hailed as an emerging superpower. Indeed, a question in the mind of analysts and business commentators is can or will India overtake China? India’s transformation from the relatively introverted and stagnant economy of the 1970s and 1980s to an economy that is increasingly dynamic is a major shift in terms of how it is viewed by both insiders and outsiders. No doubt, the Indian institutional environment, or at least some components of it, have begun to shift, especially from the early 1990s when India initiated the process of reforming its economy. Growth has also accelerated and that is no doubt welcome both from an Indian perspective as well as from an external perspective, which now sees in India the possibility of a large market into which they could sell.

In this chapter we will explore the implications of the Indian institutional environment on negotiating practices in the country. How does the negotiation process unfold in India? What kind of challenges does the negotiation process pose for foreign investors seeking to exploit the opportunities presented by this emerging giant? What kind of lessons can foreign investors derive from operating in this environment? At the outset we should state that negotiation is not necessarily a simple process even in the most benign of institutional environments. Negotiators are confronted with the inherent tension between the process of value
creation and the process of value claiming.\textsuperscript{2} Value creation invites the use of integrative strategies (win-win), whereas the use of value appropriation invites negotiators to pursue distributive (win-lose) strategies. The optimal balance between the two may not be easy to attain. In an environment such as India’s, which is changing and evolving from being closed and introverted to more open, the challenges of negotiation are likely to multiply. Ambiguity and uncertainty are essential features of all negotiations but in the evolving Indian environment this ambiguity and uncertainty is maximized and the negotiation process is likely to become even more difficult.\textsuperscript{3} We will assess the negotiating practices in the Indian institutional environment by analyzing the impact of the three different components of the environment (regulatory, cognitive, and normative) on the negotiation strategies/processes that may be most prevalent.

\textbf{a) Impact of the regulatory environment on negotiating strategies/processes}

We have mentioned earlier that although the Indian regulatory environment is now much more conducive to business activity and to foreign investors, there remain continuing problems with the bureaucracy, the judicial system, and the constraints of mass politics, which directly or indirectly affect the negotiation process. Bureaucratic constraints come in many shapes and forms. There is often the need for foreign investors to comply with a whole range of regulations/restrictions, which will undoubtedly slow down negotiation processes. As Gurcharan Das notes ‘In my thirty years in active business, I did not meet a single bureaucrat who really understood my business, yet he had the power to ruin it.’\textsuperscript{4} In a similar vein Edward Luce, a \textit{Financial Times} journalist who spent several years in India, notes ‘Yet, its senior civil servants, who include some of the world’s most educated people, often seem to inhabit a parallel universe in which “action” is defined by an internal code that bears little relation to the society it serves.’\textsuperscript{5} There is the ‘know it all attitude.’\textsuperscript{6} The problem is exacerbated by the fact that there are few incentives for bureaucrats to behave innovatively.\textsuperscript{7} No bureaucrat would like to risk his/her neck in being innovative if the innovation does not yield the desired result. He/she may be accused of being incompetent or worse still. Compounding all of this is the lack of interagency cooperation, which further undermines effective policy implementation.\textsuperscript{8} This becomes an issue, as often there are multiple layers of bureaucracy. A further issue pertains to the lack of clarity concerning the implementation of the
various rules. Consider, for example, the case of Vodafone, which is fighting the Indian tax authorities. The latter had asked Vodafone to pay US $2.5 billion capital gains tax in connection with the purchase of Hutchinson Whampoa’s mobile business in the country. This remains an ongoing dispute but more importantly the government is now seeking to reopen old transactions. This is not going down well with foreign investors. As an international M&A advisor noted ‘My clients are very concerned about the outcome of this legal battle as it will determine whether they want to invest in India or not.’ There is also the related issue that the issue of tax liability on Vodafone is hotly contested by the company. It maintains that the ‘Indian authorities have no right to seek the tax as the transaction was executed outside the country.’ The dispute has dragged on for a while but most recently the Dutch government has contacted the Indian government on behalf of the company’s Dutch unit to use an alternative dispute resolution mechanism, in parallel with the ongoing court case. It remains to be seen as to how the Indian authorities respond to this request.

The bureaucratic constraints facing the foreign investor have a number of implications for the negotiation process. First of all, the negotiation process with the Indian bureaucratic agencies is going to be slow. Indian decision makers cannot often make expeditious decisions. If a foreign investor seeks to bring direct and explicit pressure on his/her Indian counterparts to resolve the issue in a timely way, he/she runs the risk of being misperceived, and his/her intentions being called into question. The more sensitive the issue under discussion, the more likely that such a response may emerge. Furthermore, as the bureaucrats are living in their own little universe, it may take time and some persuasion to convince them. The multiple layers of bureaucracy only compound this problem. A consensus may often need to be built and in a culture where teamwork is poor this may prove to be a daunting task. The slow and ineffective implementation of the steps needed to prepare Delhi and India adequately for the Commonwealth games is a good illustration of the dynamics of bureaucratic wrangling that is often evident in India.

Indeed, as this chapter is being written, the UK-based Cairn Energy is seeking approval from the Indian government to sell its US $9.6 billion stake in India to Vedanta, an Indian mining company. The deal between the companies was concluded very expeditiously catching Cairn’s Indian production partner ONGC off guard,. While some feel that the deal will go ahead on schedule, others are of the opinion that there may be delays. As Kazmin and Lamont (2010: 21) note
'Some powerful figures among India's business community say that the Scottish entrepreneur may have to pay more obeisance to state power brokers, and that Mr Agarwal will likewise have to “grease the wheels” to make the transaction more attractive to the Ministry of Petroleum and the regulators.'\textsuperscript{13} Arcelor Mittal and the South Korean company Posco have also encountered difficulties in dealing with the Indian bureaucracy. Posco had signed an agreement with the Indian government in 2005 to establish a plant that was to begin production in 2011 but the company has yet to finalize the land acquisitions. In a similar vein Arcelor Mittal withdrew from making a US $20 billion investment in steel mills in India because it could not persuade the landowners to sell the land. Although authorities may have little power with regard to landowners, Pamela Tang notes that the government could have done more in brokering a compromise and cutting down on red tape.\textsuperscript{14}

The judicial system has problems of its own. There are severe delays in the hearing of cases (as we have noted earlier) and this means that disputes can remain unresolved for an extended period of time. This no doubt increases the transaction costs of conducting business. In practical terms it implies that in the event of a dispute, foreign investors cannot rely on the legal system for any effective redress. They must have other sources of bargaining power to achieve an outcome that might address their concerns. The larger multinationals may be better positioned, first both by virtue of their having a greater bargaining power and secondly by their ability to bear the costs of resolving disputes over a longer period of time. In addition to the delays, the judicial system, can also reverse itself. The recent decision of the Supreme Court to revisit its earlier decision on Union Carbide is a good illustration of this issue (see our discussion about Union Carbide). The court had earlier ratified the agreement that the government of India had struck with Union Carbide; it had also reduced the charges against executives managing the company. This raises issues about the finality of any decision, and if decisions cannot be relied upon to be final this is likely to increase uncertainty and the transaction costs of doing business in the country. The one flip side of this is that with endemic delays nothing might ever get definitely resolved; while this is a constraint from one point of view, it is also an opportunity for the actors to continue to do business without resolution. Foreign investors may not necessarily feel comfortable with this, but this is a way of coping with the inherent ambiguity of the negotiating process in India.

The bureaucratic and the judicial challenges are compounded by the presence of corruption. This might further exacerbate the ambiguity of
the negotiating process in the Indian institutional context. As we have noted earlier, corruption may be both pervasive and arbitrary. This no doubt further increases the transaction costs of negotiating a business deal in the country. But perhaps even more to the point, in such an environment it remains unclear as to how a firm can avoid being tainted by perceptions of corruption, even if it has not been involved in wrong doing. It may also be confronted with demands for payments, which it also needs to stay clear of. The prevalence of mass politics may make the task harder for international firms seeking to negotiate in India. Mass politics most simply means the lowest common denominator. No doubt in a vibrant democracy like India, politicians face many pressures to be responsive to their constituents’ concerns. The disparity between the urban and the rural areas, and concerns about the effect of inequality have often compelled the government to enact populist measures. Policy measures that constrain the ability of foreign retailers to expand their market presence in India is one such example. More recently, the government has sought to get the Supreme Court to review its decision concerning the Bhopal tragedy. The government is also seeking to reinitiate steps to extradite the former chairman of Union Carbide, Warren Andersen. It is seeking to do this even though previous attempts have been futile and there is little realistic prospect of him being extradited to stand trial in India. This is most fundamentally a measure designed to placate the survivors of the Bhopal tragedy, and in that sense is symptomatic of mass politics.

(b) Impact of the cognitive environment on negotiating strategies/processes

We have pointed out in that while India has now adopted a much more friendly attitude towards FDI a certain level of suspicion still exists in relation to foreign investors. Investors are often held to a higher standard than local firms. The origins of this attitude can be traced back to the Indian colonial experience and the deeply held belief among Indians that the British exploited them. This has the critical implication that investors may be held liable both for sins of commission as well as sins of omission. Whatever foreign investors do or not do will be minutely scrutinized and the merest whiff of impropriety may invite unwelcome attention. The cases (Enron, Union Carbide) are a perfect exemplar of the kind of challenges that foreign investors have traditionally faced in India. No doubt, these companies seemed ill at ease and unprepared for dealing with the vicissitudes of the Indian environment.
They committed errors of all types but at the same time they faced extraordinary pressure from the Indian government and other constituencies, which held them accountable for just about everything that went wrong in their respective projects.

The idea that foreign investors are held to a higher standard than local firms has a number of different implications. It suggests, first of all, that foreign investors must choose their negotiating strategy very carefully. An aggressive or a contending strategy, where the investor seeks to extract the maximum concessions possible, may not be sustainable in the long run. The failure of Enron’s Dabhol project in India illustrates this very well. The foreign investor may think that it has greater power but even if that is the case, the use of power will not go down well. Enron thought that it was in a more powerful position as India was desperate for electricity, but it failed to recognize that while the county no doubt needed power, it was not willing to pay any amount of price for it. A related implication is that foreign investors may often be asked to make all kinds of concessions to secure the deal. This is both a way of testing commitment and also a mechanism to ensure that India is not left saddled with a deal that may go against its interests. No doubt this may be frustrating to foreign investors, but it might be a price well worth paying if they wish to expand their long-term presence in the country. Secondly, foreign investors must be cognizant of the fact that their actions will be scrutinized very closely. Any hints of inconsistency or actions that might suggest a possible double standard will be held against them. The attempt by foreign investors to try to strike an ironclad contractual bargain may prove troublesome, both in terms of trying to arrive at such an agreement and in terms of trying to make such an agreement work in practice. The difficulties encountered by Enron in enforcing its contract in the Indian context illustrates this point well. It is imperative that during the negotiating process and in the post-negotiation phase the foreign investor try both to attain and maintain legitimacy.

Legitimacy refers to social acceptance or acceptability, and most fundamentally it suggests that if a firm has legitimacy it is viewed positively by different stakeholders in the environment. Gaining social acceptability means that the multinational firm be sincere, flexible, and communicate well with all of the relevant stakeholders. Sincerity refers to the level of commitment that the foreign investor demonstrates to India. The level of commitment can be gauged on a number of dimensions. Does the company have a short-term or a long-term orientation in relation to India? In particular, might it be willing to sacrifice
short-term profits for longer term benefits? Is it committed to behaving in a socially responsible way? Does it proactively deal with any issues that could potentially have a detrimental impact on the surrounding community? Flexibility may have a number of different connotations in the Indian context. Does the company wish to insist on the enforcement of the contractual terms as negotiated, or is it willing to consider a modicum of leeway? Does the firm demonstrate flexibility in the absence of any leverage being applied against or towards it? Is the firm willing to adjust its demands/expectations in light of the circumstances prevalent in the country? Communicating effectively with stakeholders is an important attribute and the critical issue is whether the firm deals with the relevant stakeholders in a positive and open manner, or if it interacts with them defensively. If the interaction is conducted in an open-minded way, the firm may well benefit from gaining the support of the stakeholders.

(c) Impact of the cultural environment on negotiation strategies/processes

In the chapter on the Indian institutional environment we have identified some key cultural values. These are (1) an idealistic mode of thinking; (2) coexistence of individualism and collectivism; (3) an emphasis on religious as opposed to secular time; and (4) hierarchical organizations. A related value (not discussed in that previous chapter but crucially relevant to the negotiation process) pertains to the issue of the justice norms, with the norm of distributive justice having greater saliency in the Indian context relative to the norm of procedural justice. Each of these distinct values leaves their own imprint on the negotiation process, and we will elaborate upon and highlight the consequences of each of them.

Consider first of all, the emphasis on an idealistic mode of thinking. This affects the negotiation process and the negotiation strategies pursued by Indians in a number of ways. An idealistic mode of thinking implies that Indian negotiators have high aspiration levels and are striving to attain the best possible negotiation outcome. No stones must be left unturned in this process. In complex negotiations, the negotiators will try to gather as much information as possible and evaluate it as critically as they can. The negotiation process will be slow as the negotiators grapple with the information that they have and/or seek to find faults in their counterparts’ reasoning. At the same time the negotiators will stick to their positions and not make concessions very
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easily. If the specific positions are derived on the basis of an idealistic mode of thinking that has an inbuilt legitimacy to it then where is the scope for making concessions? The recognition that compromises are intrinsic for successful negotiations may be resisted at first. Such a mode of thinking also has a moralistic tone embedded within it, and this naturally reduces the ability of negotiators to make concessions very easily.19 Indeed as Kumar and Sethi (2005: 134) note ‘The Indian negotiator may become so preoccupied by demonstrating to the other party that his/her method of dealing with the issues is indeed the right or the correct one that he/she looks the large purpose of the deal that is to create a mutually profitable transaction.’20 Indeed, over-analysis may give rise to paralysis. The pace of negotiations is always going to be rather slow. In relatively straightforward negotiations, idealism may manifest itself when Indians as buyers push for the lowest price possible, while as sellers they try to go sky high. Although, this difference between these roles is commonplace in negotiations, the point that we wish to make is that this tendency may manifest itself more extremely in the Indian case. Indian negotiators may thus be viewed as pursuing a contending strategy, in that their demands of their counterparts are high, whereas their willingness and ability to make concessions is correspondingly low. As Janette Marlowe, president and chief operating officer of Houston-based Jaemar International, noted ‘Negotiating in India is quite labor-intensive.’21 In a similar vein, Jude Magina, executive vice president of the supply chain for Dabur India, noted ‘We Indians love to negotiate and are the most argumentative people in the world … Nothing is more frustrating for an Indian than a deal getting done through long interludes of silence.’22

The coexistence of individualism and collectivism also has key implications for Indian negotiating strategy and the negotiating process. Indians may behave either in an individualistic or a collectivistic manner, and this imparts a certain level of unpredictability to their interactions. An individualistic mode of behavior would mean that the negotiators are concerned with maximizing their own self-interests, and even perhaps outdoing the other party in the negotiation; although they might gain much more than their counterparts such a behavioral mode does not emphasize relationship development. A collectivistic mode of behavior, by contrast, would suggest that Indians would behave in a more relational way and would seek to balance the pursuit of self-advantage with restraint in order to foster group harmony. Relationships play a critical role in collectivism, in that they are essential to trust building.23 The development of relationships may also help the outsider
to become a member of the in-group and once you are a member, the negotiation process becomes that much easier. As a member of the in-group, it might be easier for you to extract concessions and seal the deal. The focus is often on the long term, so who gains or loses in any specific transaction loses its salience.

The circumstances when Indians behave in one mode or the other may be difficult to predict and this no doubt enhances the complexity of the negotiating process. A further consideration of the existence of this duality is that Indians do not make good team players. A key implication of this is that the Indian negotiating team may find it hard to develop internal consensus and if this is lacking then how can a team effectively negotiate with an external party? Decision making will be slow and even if decisions are made they may not necessarily represent the best negotiating strategy.

It may also be the case that the decisions that are made by the negotiators may not have a sense of finality to them, in that they are subject to reversal. This too makes it harder for foreign negotiators to ascertain the Indian position with clarity and to develop a strategy that may be lead to a positive outcome. A related issue, and one that may be equally pertinent, is the consideration that when individuals have both the individualistic and the collectivistic tendency deeply embedded in their psyche, can they be very certain of the goals that they wish to pursue? An inner conflict within the Indian negotiator may also complicate his/her decision to choose one or the other type of negotiation strategy.

Indians are also less sensitive to issues of secular time, as opposed to religious time. This too has implications for the negotiating process. Meetings may not begin on time. And even if they do, there may be interruptions. The negotiating process is likely to be slow, which may create hesitation in the mind of foreign investors. They may begin to wonder if the negotiating process is proceeding or developing in the right manner. Are delays merely coincidental; do they signify a lack of interest or are they a negotiating ploy? The delays may often not be intentional but that will not necessarily erase the doubt in the mind of the foreign investor. In addition to magnifying uncertainty, delays also increase the costs of the negotiating process. As these increase, foreign investors may begin to wonder if it is worthwhile to continue with the negotiating process? The less culturally astute the foreign negotiator, the more likely it is that these costs may be viewed as unnecessarily burdensome.

Indian society is a hierarchical one and this has the implication that all of the key decisions are made at the very top of the organization.
This is true both of the typical Indian business firm, which is often family-controlled, and Indian bureaucracy, where in each bureaucratic agency the top decision makers have the final say. Although all societies and organizations are hierarchical, the hierarchical principle has deep roots in Indian society and culture. As Gopalakrishnan notes ‘in the Indian milieu, leadership is by personality. It is the magnetism and the personal charisma of the top man that is supposed to make the difference.’25 This has several implications. First within the negotiating team not all are or will be equals. Subordinates will often defer to their superior, and may be reluctant to provide information that they think will not be palatable to the superior. This may lead the organization to pursue a negotiation strategy that may be less than optimal given the circumstances. Consider, for example, the conflict that developed between India and China in 1962. Vertzberger notes that although the Indian decision makers had sufficient information about Chinese intentions, one of the elements that prevented Nehru from fully realizing the gravity of the situation was the reluctance of people lower in the hierarchy to transmit information that might contradict his assumptions or aspirations.26 India and the Indian decision makers were therefore caught by surprise when Chinese forces ventured into Indian occupied territory. The hierarchical character of Indian organizations also suggests that the key decision maker is the person at the top of the hierarchy. The negotiations may be proceeding well at the lower levels but unless the person at the top says ‘yes’, one can make no assumptions about the potential success or otherwise of the negotiating process. A related implication is that the negotiating process can be slow as there is little delegation of authority.

Issues of justice also loom large in the negotiating process. The idea that the negotiated agreement and the processes by which the agreement has been arrived at have to be seen as fair is now gaining increasing prominence in negotiation literature. Scholars have now begun to distinguish between the distributive and the procedural aspects of justice.27 Distributive justice refers to the fairness of the negotiated outcomes. A distinction has been drawn between the distributive principles of equity, equality, and need.28 The principle of equity means that the outcomes are directly proportional to the level of inputs provided by the parties, equality means that the outcomes are allocated on an equal bases, whereas the principle of needs means that the party which has the greatest need gets the greater outcome. Procedural justice, by contrast, focuses on the processes by which the negotiated agreement has been arrived at. In particular, is the process transparent and does
it allow for all of the actors inputs to be adequately considered in the negotiating process? It has been pointed out that while both distributive and procedural justice concerns may be relevant in India, as they often are elsewhere, the distributive justice concerns take on greater saliency in the Indian context, relative to procedural justice concerns.\(^29\) This may be attributed to the resource scarcity that has traditionally characterized India. Indeed, Sinha and Kanungo allude to the existence of poverty syndrome in India, a psychological state where people think that they think they are poorer than what they actually are.\(^30\) Needless to say, in situations characterized by the existence of such a syndrome, the negotiators are likely to be much more contentious about outcome allocation. This too may explain in part the traditional reluctance of Indians to make concessions easily. The Indian economic environment is now quite different from what it used to be only a couple of decades ago. We would surmise that poverty syndrome may become less salient as Indians (middle and upper-class Indians) become accustomed to their new-found wealth. But in the interim, there may well be a disjunction between the new material realities and the psychological conditioning from the past, with the implication that it may continue to influence behavior.

In this chapter we have sought to assess the impact of the Indian institutional environment on the negotiating process. We have highlighted some of the mechanisms by which each of the different dimensions impacts on the negotiation processes and outcomes. Our aim in this chapter and in this book is not to paint India or China in either a positive or a negative manner per se, but simply to highlight the potential difficulties that foreign investors might encounter when operating in these environments and to highlight the origins of these difficulties. By all accounts Indians are a hospitable and friendly people, but that said within a negotiating context specific challenges can arise and the purpose of this chapter is to lay bare those challenges.
In this chapter we will explore the implications of the Chinese institutional environment on negotiating practices in China. How does the negotiation process unfold in China? What kind of challenges does it pose for foreign investors seeking to exploit the opportunity presented by this emerging giant? What kind of lessons can foreign investors derive from operating in this environment?

The different aspects

(a) Impact of the regulatory environment on negotiating strategies and processes

Foreign investors often need to comply with a whole range of regulations/restrictions. The way that most Chinese deal with regulations and laws is different from the way most Westerners deal with them. The Chinese tend to have an ‘interdependent’ way of dealing with laws, meaning that the main focus is on the reaction of the context. If the surrounding people believe it is acceptable it is also acceptable to the actor. The implication is that if the controlling bodies are far away in the national capital or provincial capital then local actors will not feel the same obligation to follow the laws. The different aspects of importance will be perceived as a pragmatic way of looking at regulation.¹ Where Westerners, at least in principle, should have a more universal approach to the legal system, the Chinese approach will be perceived as contextual because it shifts from time to time depending on who else is around.² These internal dynamics will typically not be known by foreign actors, who may feel that the Chinese sometimes are willing to bend the rules and sometimes not.
The judicial system is not independent in China as it is in Western democracies. The legal system is controlled by the government and as such is used to protect the government’s interests in a more direct way than is normal in Western developed countries. An implication is that very few suspects are found not guilty. More than 90 per cent of suspects are found guilty and many accept that they are guilty themselves. That being said, normally foreigners are not sued in China. An exception is Rio Tinto (see case). During the unfolding of the case three ethnic Chinese employees were arrested and later convicted of receiving bribes after making full confessions and sentences to four to seven years in prison; this was despite the fact that the suspects had previously said that they were not guilty. There are obviously lots of issues that are not known to the public and therefore cannot be evaluated, but the main message is still valid (see corruption below) namely that once foreigners are arrested the chance of what in the West is called a fair trial is almost non-existent.

The more contextual approach among the Chinese also means that their way of dealing with bureaucracy in China is somewhat different to Western ways. As mentioned in chapter 4 a huge bureaucracy has existed in China for the last 2000 years and the way it works is different from systems in Western societies. First of all the bureaucracy in China is omnipotent, in that it covers all areas of life. A good example is the one-child policy implemented in China the last 30 years. The other aspect is that bureaucratic constraints are more contextual where they exist. The contextualization discussed here and in chapter 4 makes it difficult for Westerners to evaluate what they can get away with.

Bureaucracy in China will, in general, only appear as a constraint when the Chinese counterpart is not interested in developing a deal with the foreign partner. Overall the bureaucratic system in China is supportive of international business and therefore of creating win-win deals that are sustainable over a longer period of time. When foreign companies have projects in China that create win-win outcomes then the project will typically also materialize. In general the Chinese do not experience social trust and as such do not have trust in people at the onset. Trust is built through development of mutual benefit and as such is more contextual for Chinese actors than is the case in Western countries.

The majority of the Chinese population and the Chinese government realize that China can learn something from exchanges with foreigners. As mentioned earlier, since joining the WTO in 2000 the country has become more open to foreign influence than most other developing countries.
It is difficult to evaluate the power relations between the central and the local bureaucracy in China for foreign businesses. An example is Arnold Tanner and Western Electric, which through an agreement with the central government, including Deng Xiaoping, established the joint venture Taibao Coal in the mining sector in northwestern China. The managers thought that by obtaining support from the central government it did not need to work with local government. The Taibao joint venture was in the interest of China, which has a lot of coal but of fluctuating quality and there was no tradition of separating good and bad quality coal. Tanner’s Western Energy was not aware of the power of the local government because it was never an issue when he supported the more centralized Soviet Union. China is not as centralized and local government can be obstructive in many ways without going upfront against the central government, which is obviously not allowed in China either. The Chinese have developed a sophisticated way of communicating indirectly. Western Energy should have been more open to the interests of the local bureaus and other local agencies. Because of the fact that local interests were not considered, the local governmental agencies had no interest in working actively for Taibao Coal, with the result that many specific requests were never fulfilled. The joint venture never became profitable and after Tanner passed away it was closed down. Other joint ventures that were operating better were characterized by paying attention to the local interests as well as being in accordance with central policies.

The government controls the pace of progress more than most governments. It can do this because the government is stronger in China than in many other countries despite the fact that it is retreating rapidly. If the government wants issues to be resolved quickly then it can enforce this. One example is the change in attitude towards wholly foreign-owned enterprises in China. The policy shifted after the uprising in 1989, when many foreign businesses left China because of the international boycott. Foreign companies that were applying for a wholly foreign-owned company in China suddenly got permission within a month or so, where earlier it had taken months if not years. The Chinese government had decided to keep as many foreign businesses in China as possible; to get them to stay it issued licenses to foreign headquarters as fast as possible. The events show something about the power of the central government.

Corruption
As stated in chapter 4, China is becoming more and more corrupt and the problem is likely to worsen. The issue will be further exacerbated
by that fact that foreign invested companies increasingly are employing overseas ethnic Chinese. This is not because they are more corrupt by themselves, but because these Chinese are more prone to being approached by local Chinese cadres who might be corrupt.

During huge recent international events such as the World Exhibition in Shanghai 2010 corruption became quite straightforward as Chinese transportation companies and customs clearance companies targeted the foreign pavilion operators. These operators were directly or indirectly representative of the more than 100 countries that participated in the world exhibition and therefore had to clarify their own and their countries’ position in relation to requests for bribes. Previously most corrupt activities took place between Chinese actors and they were not well-known among business people outside China.

The whole context and what is defined as corruption is also different between China and the West. One of our respondents mentioned that the Chinese hear very differently from what Westerners believe. An example is ‘I don’t want to engage in corruption or shortcuts’ was heard as ‘I don’t understand Chinese methods and do not have much respect for your opinion.’ The example shows that corruption cannot be isolated from other traditional practices of the country. The issue here, as in many others, is that when corruption goes international then the context changes and the requirements needed to deal with it become more universal.

(b) Impact of the cognitive environment on negotiating strategies/processes

Attitude towards foreign business

Language is central to a successful outcome of negotiations between counterparts. As described earlier, the Chinese language has played a unique role in keeping the country together for the last 2000 years. Being pictographic in its construction, it is very different from Western alphabetic languages and more time-consuming to learn, in particular for Western people, who typically start learning Chinese when they are already adult. Most negotiations are therefore done though interpretation and in most cases by an interpreter provided by the Chinese side. It is an advantage for the Chinese side to provide the interpreter and it should be emphasized that the foreign part should bring its own interpreter when negotiating projects despite the fact that levels of English proficiency are rising rapidly in China. By providing its own interpreter, a foreign negotiator can get more information about the positions of the counterpart and the dynamics of the negotiations by asking the
interpreter to debrief the foreign negotiating team at the same time as he or she is doing the interpretation.\textsuperscript{4} A lot of information can be obtained by observing the dynamics within the Chinese team and looking at the change in wordings and body language among the team members. The interpretation and debriefing is typically done by overseas Chinese living in the country where the company is headquartered.

**Overseas Chinese in the negotiation team**

Overseas Chinese play an increasingly important role in non-Chinese negotiation teams in China. Western companies are increasingly targeting overseas Chinese as employees at various levels because of the growing importance of the Chinese market. The importance of overseas Chinese becomes more important as China become more important as a business partner. In addition most large companies have carry out manufacturing in China, where the factories are entirely, or with a few expatriates, operated by Chinese staff.

During the last ten years the involvement of ethnic Chinese in Sino-Western businesses has increased substantially. During international negotiations with Chinese counterparts the foreign negotiation teams more and more often have overseas Chinese as their members. The overseas Chinese can speak Chinese and many of them are familiar with Chinese traditions and Chinese etiquette. It is preferable to have Chinese in the negotiation team both when Chinese delegations come to visit Western companies and when Western companies are negotiating in China. The overseas representatives can make sure that the linguistic part of the communication process goes smoothly. Despite rapid improvements in the English of local Chinese interpreters it still varies, despite the fact that an increasing number will have stayed in an English-speaking country. In addition, and because they understand the language, overseas Chinese are better than the Westerners in discerning the power relations in Chinese negotiation teams, partly also because they can have more informal talks with members of the team. When a Chinese negotiation team visits the headquarters of a Western company another advantage of having Chinese in the Western team is that the overseas Chinese can get a feeling for what the team members would like to do when they do not negotiate: the mix of sightseeing and shopping with professional work is obviously not the same as for other delegations. Some groups that frequently negotiate in non-Chinese countries prefer short stays with little or no sightseeing.

Building a good atmosphere is also important, in particular when Chinese negotiation teams are negotiating overseas. As cross-cultural
training, including the development of comfort zones in foreign cultures, is still lacking in most Chinese companies. Many Chinese delegations prefer to be treated according to Chinese customs. This is particularly the case when talking about banquet invitations, toasts, and so on. Despite what delegation members might say, many will prefer to have Chinese food, including rice and hot tea, when staying several days in a foreign country. Although some are of course curious and want to try local food from the western country they are staying in, if you choose to serve western food be aware that most Chinese are not accustomed to use forks and knives. One of these authors is normally asking Chinese delegations whether they want Chinese or western food as it also depends on how long it is since they had Chinese food last time. The delegations that choose local food almost all have difficulties cutting beef slices into pieces; like most westerners have difficulties using chopsticks is a decent way. Some Chinese simply use a spoon, that always have existed in China as the Chinese eat plenty of soup albeit made of porcelain in traditional China, because it is more convenient than fork and knife.

The Chinese culture is strong and tight, therefore the team members will prefer to be treated as Chinese. However, that being said it should also be observed that the Chinese tend to have a lot of knowledge about the foreign culture they visit. Chinese negotiation teams tend to use more time preparing a negotiation than Western companies and will also research the culture they are visiting, although such instruction will not touch the value system but concentrate on business etiquette. Our advice is to be sensitive about local culture in the region that your business partners are coming from. Despite the tightness of the Chinese culture there are still many differences between regions and provinces. At the same time it is important for both westerners and Chinese to realize that despite some cultural knowledge representatives from the other culture will always see their counterpart as somewhat ethnocentric. One of these authors has been working with Chinese people in various contexts for more than 30 years, but I am still considered very western by most Chinese.

(c) Impact of the normative environment on negotiation strategies and processes

As more and more overseas Chinese get an opportunity to obtain part-time or full-time positions as bi-cultural agents it is important to be considerate about who, among the overseas Chinese, the Western companies employ. With the dramatic changes that have taken place in Chinese society the competencies required today, except the language,
differs from those needed 15 years ago. This is particularly the case for the regulatory aspects. It goes without saying that some Chinese are better at keeping up their Chinese contacts than others. Most Chinese keep good contacts with classmates from universities and high schools. These are often of tremendous value for overseas Chinese themselves and for the companies they work for but of course they have their limits. These connections are strongest in a certain area or city, and one also has to be aware that most overseas Chinese are not educated at the top universities in China, but rather left the country because they did not get a good education in China.

**Networks**

The Chinese word ‘guanxi’ is becoming well-known in the Western world. Social trust is lower in China than in the West and it is declining in both regions. Trust is, to a higher extent, confined to network relations in a globalized economy and traditionally networks are stronger in China than in the West. Networks originate in the family, schools, neighbors and to some degree among colleagues. In China, networks are also built on common background. People stick to the networks that they have built while attending secondary and tertiary education during their adult lives.

Commercial negotiations are influenced by network structures. As the level of general trust is low, the Chinese tend to look at specific dynamic relationships. Chinese negotiators want to create win-win relations with network partners as they want to keep the network relations in place, whereas they want to win in situations where networks are not activated. There is therefore a big difference between negotiations in the two situations. Foreign partners who have established relations in China one way or another have a better chance of achieving a win-win outcome.

This is again an area where overseas ethnic Chinese can play a role. In the future companies should evaluate their Chinese employees not only in terms of language capability, but also in terms of network capabilities. The challenge is that companies can only make these evaluations if they have at least one core Chinese employee, therefore as China becomes a global player on the business scene it is increasingly important to have Chinese staff employed in the headquarters of western multinational companies.

The comfort zone of any culture is with people from one’s own culture and this might even be more so in a culture that until recently has been closed to outsiders. ‘There is difference between insiders and outsiders’
as a Chinese proverb says. Chinese people who meet another Chinese person will feel that they have met an equitant who already deserves and receives a much higher level of trust than Western members of the negotiating team. At the time of writing, many companies are concerned about their lack of China competences. Before China became a key international player for most multinationals the importance of these competences was not so self-evident, but today when many companies talk about China as their second home market, China competences are of course crucial. In the future we will not only speak of China competences but competences in different areas in China, such as Southern China.

As stated by one of our respondents ‘The only thing worse than saying “guanxi” doesn’t exist is to say, every business culture has some form of networking and relationship building.’ The Chinese tend to see their own ‘guanxi’ as superior to current network practices in the West. One difference is that ‘guanxi’ does not transfer. When your ‘guanxi’ guy goes, so does the relationship. This is of course not the same as saying that Chinese people with strong networks cannot extend them to other people. The Chinese live in a world of ‘guanxi’, where they go from one person to the next in another person’s networks and so forth until they have established contact with the person that they want to be in contact with. Once when one of the authors wanted to establish an interview with a manager, Wang, in Beijing he called his acquaintance in Beijing and asked if she could help establish the contact. As a normal well-connected Chinese she asked that he give her a couple of hours. When she returned she told him that he could now call manager Wang and say that Mr Shi had said I could call. Being a Westerner I thought this was an awkward situation because I thought I had to tell manager Wang that I got his contact details from Mr Shi and therefore tell a lie. Of course that never happened. When I called, Mr Wang said that he knew I would be calling and asked why I wanted to see him. It is certain that Mr Shi had called and talked with Wang but as my contact had not known she had got this message herself. The real-life story shows the strength and complexity of Chinese networking practices.

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Networks and trust are two sides of the same coin. When one of the authors was selling turnkey projects in Beijing, he would, together with his Chinese wife, spend time together with his customers in the evenings in their hotel while negotiating during the daytime. Although the customers were living in poorer hotels, they were always happy to sit and talk and drink a cup of tea. Ultimately we would build a higher level of trust and get the contract. The Chinese customers appreciated that we spent time with them outside work hours.
Face

Face is still crucial in China under certain conditions but is also somewhat different from the West where the concept of face also plays a role.

First of all it is important to be aware if Chinese negotiators mention that something is becoming a ‘face issue’. The expression indicates that the issue has to be resolved otherwise the person involved will lose face, which might be devastating for continued negotiations; the person who feels that he or she has lost face might leave the negotiation table. Chinese people take losing face extremely seriously and something that by all means should be avoided.

‘Face’ in China means that there are other differences between what you show to other people and what you do not show to others. For example it is acceptable to show one’s home to other people, but it is not acceptable to show one’s home to others while it is in a mess. The home has to look clean and well-organized, otherwise it should not be shown under any normal situation.

The example can be taken to the negotiation ‘table’ where it is also the case that controlled feelings may be disposed, but uncontrolled ones should not be exposed. In a negotiation session the Chinese will use face strategically. One of the authors was used to being approached by surprised foreign businessmen, who told him that the Chinese would either be very direct and offensive during the negotiations, or would say that by raising a certain question the foreign party would cause the Chinese partner to lose face. First of all the Chinese feel they have the right to be direct if they do not think that there is a good relationship. As the Chinese are motivated by relationships, they are also confined by their lack.

In China face is not only something that people lose, it is also something that people get and exchange. During negotiation sessions it is possible to get a sense of how the Chinese counterpart experiences the ongoing negotiations by noticing their communication style, but of course many local Chinese interpreters might not translate very direct Chinese statements. During social activities taking place in between the sessions, Western negotiators will be evaluated by to what extent they give face to the Chinese team by attending these activities in a proper Chinese way.

You will often hear the Chinese say that you can give them face by attending a certain activity. This is part of the atmosphere building, which is important everywhere, but in particular in China compared to the West.
Cultural comfort zone

The concept of a cultural comfort zone has appeared during recent years as describing a zone where people find themselves comfortable because they spend time with other people who are socialized in the same culture. Due to the fact that international negotiations have always taken place outside cultural comfort zones, the dialectic exchange between globalization and international negotiations is worth pursuing. Both in a more globalized world and in international negotiations, people need to consider how to increase one’s own comfort zone by spending more time in the comfort zones of others. It is about feeling comfortable in a group belonging to another cultural group. In general as one spends more time in the comfort zone of another culture, one feels less anxiety or less bored, and therefore becomes more active about participating in the other group’s activities. It has to be emphasized that language plays an independent role. It is difficult to feel comfortable in a room where you do not speak the language.

Hierarchy

As mentioned in chapter 4 hierarchy is important in China. It is important in more hierarchical societies to match the top level. When you meet with a Chinese negotiation team make sure that the highest level is matched by your team. If this is not the case the Chinese team might feel that your team is either less or more interested. Chinese negotiation teams consist of people at various levels. The leader of the group will disclose himself/herself by being the person who opens the meeting and introduces the other members. People are introduced by family name and title. The interpreter will obviously also disclose himself/herself and has, somewhat awkwardly, to introduce himself/herself, something that Chinese rarely do. The fact that some of the team members do not say anything during the negotiations does not mean that they do not have a specific position in the group. Some will be technical experts and others will be note keepers. The Chinese are well known for keeping extremely good track of what has been said during meetings.

Polychronic time approach

Except for a few very formal sessions, it is not meant to be impolite that some team members are engaged in parallel activities such as checking emails or even walking in and out of the room. The Chinese tend to be apprehensive about rejecting people or working with a tight calendar, therefore they often have several activities going on at the same time.
Holistic

The Chinese tend not to like using a salami technique during negotiation sessions. Traditionally Chinese negotiators tend to see mutual interaction between issues that have to be solved during negotiation sessions, therefore they often will go back to issues that the Western counterpart already think are solved. The solution of one question might be seen as having an impact on another issue that was solved previously, therefore the Chinese team might suggest that the parties return to an already solved issue.

Pragmatic

A negotiation team from China might appear to stick to overall principles during negotiation sessions. The reason will often be the heavy control that is enforced by central authorities (see sector on hierarchy). In general, though, principles are not important for Chinese negotiators. They are typically open and willing to search for win-win solutions also because the position of the legal system is lower in China compared to Western Europe and the US, therefore the Chinese partner wants to make an agreement that is sustainable, meaning that both parties benefit. Whereas Western parties would be more inclined to focus on the legal position of an agreement, the Chinese side is more prone to look at the relationship aspect.7

The Chinese propensity to seek win-win solutions might sometimes be hurt by the Chinese being somewhat competitive if they are not confined by strong networks. On the other side it is strengthened by the Chinese dislike of compromises. Compromises are seen more as lose-lose deals, where the negotiating parties have not spent enough time soliciting for common ground.

Results oriented

Chinese negotiation teams are extremely results focused. As general principles are not considered important in China, the focus tends to be on results and speed. Things cannot develop quickly enough. If issues come to a point where they do not move ahead then the Chinese party tends to lose interest and move on to the next. This focus on results may appear somewhat blind to many Western business people, as when a video was posted at Youtube showing how a 15-storey hotel was built in six days. With this speed a new building can quickly be erected, if the first is not functioning (of good quality) a new can be built, but the question is still to what extent the resources used are sustainable. One of
the authors was staying at a brand new hotel in Shanghai in 2010 built in the post-modern style with all sorts of gadgets starting automatically when one entered the room, yet at the same time, the air conditioning on/off switch was not functioning.

The extreme focus and quick decision-making in China should not be confused with lack of patience at the negotiation table. Chinese negotiators do not want team members (both themselves and their counterparts) to rush. As with any negotiation team the Chinese will try to orchestrate the rhythm of the negotiations, so they can decide when to go quick and when to go slow.

**Indirect communication**

As has been indicated above, communication in China, as everywhere else, is contextual, but when it is considered appropriate to communicate in more direct ways and when not is somewhat different from Western practices. In general communication inside networks has a double function of sustaining harmony and getting the message across the table. Communication outside networks tends to be more direct than communications taking place during the negotiation process.

As mentioned it can be difficult for Western counterparts to know to what degree the Chinese are seeking information or being uninterested. On the other hand, Chinese negotiators can be direct if they think conditions are right.

**Communication strategies**

The uniqueness of the construct of Chinese language has been mentioned as an implication of the inwardness of Chinese culture for long periods. Another implication is that Chinese cultural tradition is itself a unique communication strategy that is difficult to comprehend by Western negotiation teams, because it references a set of common, indigenous knowledge, which is not well-known in the West.

**Strategies in negotiations**

As mentioned in chapter 4 China has a number of strategies that can be used in any situation disposed for strategic interest. It is often believed, for example, that Chinese negotiators say ‘Never directly attack an opponent whose advantage is derived from its position. Instead lure him away from his position thus separating him from his source of strength.’ It means that it is better to attack the counterpart when he is not in his strongest position. In general the Chinese have a variety of strategies that they learn as children, which compared with their
persistence and focus-orientation, probably, tend to give them advantages over western counterparts.

Gift-giving

The importance of gifts in Chinese culture cannot be over-stressed. Western delegation going to China should always bring a number of gifts that is appropriate for the different members of the Chinese negotiation team. As the Chinese will give different gifts according to the status of the members of the non-Chinese negotiation group, the western counterpart can choose to do the same, but it is also acceptable in most situations to give the same gift. It is important to consider what the purpose of the gifts is. By giving the same gift the group win support from lower status members of the Chinese negotiation team. But of course it also depends on the Chinese negotiation team leader. Some Chinese team leaders do not care getting the same gift as they know western tradition. Other more conservative Chinese team leader will find it strange begin questioning the competence of the non-Chinese negotiation team.
Negotiating in India: Some Case Studies

In this chapter we discuss three salient cases that illustrate Indian negotiating behavior. The cases have been constructed on the basis of published material. It needs to be noted that these cases represent high profile and salient disputes in which the Indian government was a major player. In all of these cases, the Indian government was interacting either with a multinational firm (Enron, Union Carbide) or with other governments and international trade organizations (WTO). The negotiations were often protracted, difficult, and messy. The dynamics of the negotiation processes can be well understood from the standpoint of the institutional perspective, which has formed the basis of our comparing India with China. The Enron case represents a well-publicized dispute between the state government of Maharashtra and the now defunct Enron corporation. The parties negotiated and renegotiated, but to no avail. The Union Carbide (now part of Dow Chemical) dispute dates back to the Bhopal tragedy of 1984, when a leak of a poisonous gas led to thousands of deaths. Although the Indian government and Union Carbide initially reached a financial settlement, the Indian government has to this day continued to insist on the extradition of the then Union Carbide Chairman, Warren Andersen, a request which the US has turned down previously. Our discussion of the case highlights all of the salient elements in this apparently never-ending controversy. The India WTO interactions highlight the continued use of a distributive strategy by India. A common theme in all of these cases is the often never-ending and messy character of the negotiations.

Case study: Enron

Enron and India
The case of power plants in India illustrates the many different aspects that may influence the negotiation process in a different institutional
setting. In this particular case, multiple stakeholders, an imperfect institutional environment, and a lack of adequate understanding of the Indian institutional environment by Enron negatively influenced the negotiation process between Enron and the state government of Maharashtra.

**Indian power sector**

In the early 1990s blackouts were a common phenomenon in most of India and economic progress was set back by power shortages. Until this time the power plants had been state run, but the deficit in power and the prospects of even worse conditions forced politicians to look for new solutions. Inefficient power plants and distribution loss meant that state electricity boards were losing approximately US $20 billion a year. This loss was attributable to the fact that politically influential farmers were supplied with free power, hence contributing to a large part of the deficit.\(^1\) Previously the World Bank had supplied funds for India’s power sector, but it cut funds in 1994 in response to the free power supply to farmers.\(^2\)

It was difficult for India to attract foreign investments in its power industry because the institutional environment made investments prone to many risks. An ineffective and lethargic bureaucracy, an introverted mindset, poor infrastructure, and corruption were deterrents that foreign investors had to deal with. Furthermore, prior to 1991 India had a rather restrictive foreign investment regime, which meant that potential investors would have to operate in an environment characterized by hostility and suspicion towards foreign business.

In 1947, after its independence, India recognized that it could not compete on its trade with the rest of the world. As a consequence it closed its economy to foreign companies and outside competition. This successively led to state-owned companies gaining a monopoly in many industries, such as transportation. The state-owned monopoly also led to a clear inefficiency compared to other countries.\(^3\) In 1991 the Indian state took several measures towards becoming a more market-based and more foreign-investor friendly economy. Prior to 1991, a strict licensing regime was in place, which meant that investors had to seek approval before enhancing their existing business or starting new ones. Foreign investors faced additional barriers in the nature of equity that they could hold or in profit repatriation. The reforms of 1991 largely did away with the licensing apparatus and allowed foreign investors to enter India with a 51 per cent equity stake automatically. Moreover, reductions in tax rates, liberal trade reforms, and political encouragement in
FDI meant that sectors previously run by the states slowly opened up to foreign businesses.\(^4\) In particular, infrastructural investments opened for investments in the early 1990s. These included telecommunications, roadways, air transportation, and the power sector.\(^5\)

Despite new market reforms, no power companies put forward an offer. This reluctance may be found in the explanation put forward by Teisch et al. who state ‘although the new guidelines did not require a foreign power company to have a local partner, it seemed politically desirable to have one in order to overcome the appearance of exploiting India and not giving back to the community.’\(^6\) This may have scared off foreign companies, which did not see any potential local partnerships.

**Enron**

Kenneth Lay had a doctorate in economics from the University of Huston. He was the chairman of Houston Natural gas and an economist at Exxon before he emerged as the leader of the new US gas company Enron. Government controls had been relaxed, which enhanced competition in the natural gas business. This also led to new mergers in the industry. Enron was a beneficiary of the changed regulatory environment, being the result of a merger in 1985 in the United States between Houston Natural Gas and InterNorth.\(^7\) However, lower gas prices and a debt from the merger meant that the company had to start thinking in new ways.\(^8\) Together with Jeff Skillings, a business graduate from Harvard, Lay had to adapt Enron to the new challenges. Besides expanding itself into becoming a wholesale buyer and seller of natural gas, which was the primary reason for its success, it also started to look into new markets.\(^9\)

**The negotiation process**

In 1992 the central government of India invited private investments in its power sector. At the end of May 1992 a government delegation went to the US and met with Enron. After this Enron announced that it was interested in investing in a power plant in India, and shortly thereafter Enron officials landed in New Delhi and met with officials of the central government. Two days later the company went to Maharashtra to investigate the proposed land for a power plant. Enron went into negotiations with Maharashtra officials and they put forward a gas-based power offer, which was approved by the government. On 3 June Maharashtra’s chief minister signed a Memorandum of Understanding (MoU), which led to the initiation of the Dabhol Power project. Based
on the agreement the Dabhol Power Company was established. It was to be shared ownership between Enron (80 per cent share), Bechtel Enterprises, and General Electric (10 per cent share each). The plant was the largest power station and the first foreign power project in India. It cost nearly US $3 billion, which made it the biggest FDI in India.

Because of the perceived risks involved in the project Enron demanded 23 per cent return on equity (ROE), a much higher share than had been approved on previous power projects in India. This agreement would ensure that the Maharashtra State Electricity Board (MSEB) would buy its power from Enron, provided that Enron met specific efficiency targets. In addition the central government agreed to pay for the power if MSEB was unable to do so. The central government also agreed to the condition that any legal disputes concerning arbitration would be dealt with in a pre-approved London court, as Enron did not have much trust in the Indian court system. Enron thereby sought to secure itself from ending up in a legal turmoil in the Indian court system, which was known for its long drawn-out processes and potential corruption. One might therefore argue that the central government went to great lengths in its power project with Enron. The reason for the government’s poor negotiation result might be explained by the difficulties of finding competitive bidders for the power sector in India. This was at least one of the arguments put forward by the chief minister who negotiated the agreement. Furthermore, the favorable terms for Enron might be seen as an attempt to further other FDIs in the power sector in India. Nevertheless, there was also a great deal of speculation as to whether corruption was involved in the deal. Was it actually doable to secure such a bad agreement, were it not for foul play in the negotiation process?

The conditions of the project did not satisfy everyone. The World Bank claimed that the project was not financially feasible with prices per kWh unfavorable compared to other power projects. The price per kWh was US $0.074, which was US $0.034 above price level compared to other producers at the time. It should, however, be stated that Enron planned to run the plant on clean-burning fuel, which meant that it would be more costly to run. Additionally, the guaranteed rates of return on investments and payment of bills to Enron made the World Bank withdraw its support. Other critical objections were advanced. India’s Central Electricity Authority claimed that the MoU was one-sided and unequal, hence not supporting the interests of Maharashtra. The objections pointed to the insufficient detail of when the 20-year contract
would begin, the specific costs of the project, when the electricity would be available, when the MoU was signed, and other important information. Furthermore, MSEB had agreed to purchase a minimum amount of fuel every year even though it might not use it.\textsuperscript{18} There was also the concern that under the terms of the contract the price was projected to increase every year.

As is evident from the above the project did not begin smoothly. As the power purchase agreement and the return on equity were being negotiated, the Dabhol project came under unwelcome critical scrutiny. Critics complained that corruption took place, that the power prices were too high, and that the project had not been up for any competitive bidding process. The government explained the lack of competitiveness by the fact that no other company had entered the bidding.

The project also met resistance in local communities, among which were environmental groups and local fishing communities, which were afraid of the pollution that the plants would cause in the region. According to Palnitkar et al. tension among opponents escalated to such an extent that a bomb exploded in the hotel where Enron’s PPA negotiating team was staying in March 1993.\textsuperscript{19} There is, however, no mention of who was behind the bomb. Nevertheless, the event was testament to the outrage the project had caused, especially towards Enron.

Between 1993 and 1995 several riots and demonstrations took place led by local communities and grassroots organizations, which voiced their discontent. Moreover, labor unions, environmental groups, and political parties expressed their dissatisfaction with the agreement in the media and through political action.\textsuperscript{20} After several of these riots in 1993 the new chief minister, Sharad Pawar, demanded a renegotiation of the PPA. Enron agreed to cut its 23 per cent ROE slightly and make other small compromises, after which both parties signed the deal and in 1994 the construction of the big plant began. Nevertheless public and political dissatisfaction with Enron and the state government was ongoing, and in 1995 the state elections were held and the ruling Congress Party lost power in Maharashtra. Fuelled by the opposition to the plant agreement the two nationalist parties Bharatiya Janata party (BJP) and the Shiv Sena were voted in. The new state government promised its constituents that it would review the agreement.\textsuperscript{21} In 1995 it announced that the Dabhol project would be cancelled. According to the new chief minister of Maharashtra ‘accepting this deal would indicate an absolute lack of self respect and would amount to betraying the trust of the people.’\textsuperscript{22} Officials of the new state government reviewed the project and cancelled the contract with Enron.
After the cancelation of the project there was a great distance between the two parties. The two nationalist parties had used Enron as an example of a new colonial invasion and an example of what would happen when giving way to FDI. Enron was thereby used in a political game that would ensure Shiv sena and the BJP political power. Unfortunately Enron only added fuel to the flames when the US energy secretary in June 1995, apparently encouraged by Enron, essentially stated that ‘India faced big trouble if it could not deliver on contractual agreements,’ arguing that many future foreign investments could be endangered by the Enron contact dispute. This provoked Indian officials and media, which saw this as a threat issued by the US. Moreover the statement was also an embarrassment to the US government.

Nevertheless, two months after the cancellation the two parties agreed to renegotiate the contract once more, as the current situation was not satisfactory to either of them. Enron was to lose a big investment and the state government still had an energy deficiency.

As pointed out by Richard P. Teisch et al. there were several stakeholders with different objectives keeping the project from implementation. On the one hand, the central government had no interest in the project stalling and wanted it finished as soon as possible. This was especially so bearing in mind the objective of future power projects in India and the ramifications that a deadlock would have for foreign partnerships in power projects. On the other hand, the newly elected chief minister of the state Maharashtra would want to have better terms for the state. In terms of political consequences, in light of the many demonstrations he would also have preferred an Indian partner. MSEB wanted lower electricity costs. What all of these stakeholders and others had in common was that they wanted a swift solution to the power shortage.

A new committee, composed of industrial leaders and academics, was assigned to renegotiate the contract with Enron. The negotiations lasted from December until January and a new contract was signed. Under the new terms project costs were reduced by 11 per cent, the electricity price was lowered to US $0.06 per kWh, and the plant output was to be increased. The project was split into two parts. Naphta fuel, which was preferred by the state government was to be used in the first part and the more environmentally friendly fuel, liquefied natural gas, was to be used in the second. MSEB got a 30 per cent equity share, Enron had 50 per cent, Bechtel had 10 per cent, and General Electric had 10 per cent.
Thus an agreement was finally reached and it seemed that all official parties were satisfied with it.

Nevertheless, in December 2000 trouble between MSEB and Enron started to develop again as MSEB could not pay its electricity bill. In January 2001 it announced that it could not afford to pay the negotiated prices for gas.27 Dabhol Power Company invoked the counter guarantee by the federal government in February 2001.28 By April, however, the federal government had not met its guarantee for two months as it claimed that the plant has not restarted power within the time limit agreed upon after a previous shutdown. This drove Enron to issue a political force majeure to the Indian state, saying it could not, under the current conditions, uphold its obligations towards the state of Maharashtra and threatened to cut off power to the state.29 The federal government nevertheless had no intention of paying bills before issues of the shutdown had been resolved. Furthermore, the consequences of a shutdown were too minor to scare the government, as its power purchase at the time was very limited and the plant only operated at 30 per cent of its capacity. This was because MSEB bought from other, cheaper, sources first and foremost. Enron argued that if the plant operated at much higher rates the electricity would also be cheaper.30

During 2001 many disputes and legal threats took place because the agreement had not been honoured. The counter guarantee, which had been agreed upon in the contract, was not met by the central government.31 In May MSEB annulled its contract with Enron. This was after a preliminary termination notice given by Enron a week before, which stated that it would quit the project in six months. MSEB insisted that its subsequent annulment of the contract was based on the fact that Enron had not honored certain technical functions of the plant. Enron, however, did not see any legal support for the annulment.32 In September 2001, Dabhol Power Company handed two more preliminary termination notices to MSEB for its lack of payment for April, May, and June and for MSEB’s decision to cancel its PPA with Dabhol Power Company. Enron argued that MSEB cannot simply neglect its commitments in the agreement. MSEB argued that it did not have to make any payments as it had rescinded the agreement and thus the PPA. On the contrary it found that Dabhol Power Company owed MSEB money for issuing misleading information about the plant’s capacity.33

Following a long dispute over payments from MSEB, Enron tried to find a buyer for the power project in 2001. At the same time Enron’s business practices were being questioned in the US and the corporate
giant therefore did not stand a good chance of winning the moral battle in the Dabhol power project dispute. Eventually, Enron went bankrupt in 2001, after trying to revive interest in its power project several times.

Analyzing the negotiation process

No doubt this was a complex negotiation but nevertheless there are some very concrete reasons as to why the power project did not succeed. First, and foremost the deal was considered unfair right from its inception. It was felt that Enron was taking no risk (but for the operational risk) and that much of this risk had been shifted to the Indian government. The fact that the World Bank was critical of the project from the start did it no good. On the contrary, it may have further intensified suspicions of corruption between Enron and the local government. Furthermore, the comparatively high gas prices did not result in local support for the contract, as the government had previously been able to buy cheaper power from local power companies. The secrecy about the PPA furthered opposition to the project among the wider public. Although contractual details may be considered to be rightfully confidential, secrecy about the contract fuelled suspicions that something was not right. Another critical point to note was the speed with which the contract and PPA were signed. Enron is repeatedly described as having a very aggressive business style. While the Indian local government was very quick to sign a PPA, one might have expected an experienced power company to be more careful when entering an agreement in a foreign country, which has traditionally been skeptical and often suspicious of foreign investment. Although the Indian laws and regulations regarding foreign investment had changed in 1991, it did not necessarily mean that the local attitudes had shifted correspondingly or to the same degree.

Enron’s aggressive business style points to a lack of cultural awareness, in the sense that there was no attempt to build a sound relationship, which is often customary in Asian business cultures. The lack of cultural awareness is also testified to by Enron’s ignorance towards the local population, such as environmental groups for instance. Having been a foreign colony and only recently opening up to foreign investors, the onus is clearly on foreign investors to earn trust. Ms Mark, the chief executive officer of Enron International in 1998 admitted that the company failed to build a relationship with the local community. ‘We should have exploited our use of clean fuel to enlist the support of environmental activists in strengthening our case with the government.’
An additional example of lack of local cultural awareness was Enron’s decision to proceed with the project on 100 per cent equity. Having a local partner in the first phase would have diluted the project’s political salience and made it that much more palatable. In subsequent renegotiations it did give MSEB 30 per cent equity, but it was perhaps already too late. Nor did Enron recognize that by adopting an aggressive negotiating style, it would heighten Indian suspicions about its intentions. Enron made the erroneous assumption that because India needed power, it might accept it at any cost. Nor did Enron consider the fact that a strategy of maximizing the return on the project would only enhance the risks. It would appear as if the company was operating on the assumption that high risk necessitates high return. The contrary assumption might have been more beneficial for it and for the project as well.\(^{36}\)

Enron also seemed to lack any awareness of the institutional environment in which it was operating. The lack of trust in Enron created a grand opportunity for the opposition parties to win the local election. Using Enron as evidence, they could support the notion that everything foreign would be contrary to the Indian interests. If the Enron officials had spent some time researching the political environment, and finding some common ground or striking some deal with the nationalist parties prior to negotiating the agreement, they might have been able to avoid such great opposition. On the basis of India’s colonial past and its previously restricted investment environment it was no surprise that the nationalist parties Bharatiya Janata and the Shiv Sena could easily gain support among the public. It was thus a big failure on the part of Enron not to establish more support among its stakeholders, both politically and in the public. Enron had put all its faith in the contract, which never seemed to last because it would always be renegotiated. By focusing attention on the contract there was the further risk that the trust between parties would be destroyed, as the public and other stakeholders started to wonder why so much emphasis had been placed on clauses, and if the other party was the looking for loopholes in the contract. The secrecy surrounding the contract further eroded trust in Enron.

While there have been many critical objections as to the contract in itself, there are also many sensitive issues surrounding it. Although the contract itself has been criticized for being unfair in terms of unfair pricing, counter guarantees, and return on equity, the outcome might have been very different had Enron been more aware of the institutional environment in which it was operating. Had it been more aware of this
it might have approached the negotiations differently. Enron needed to focus more on managing the legitimacy of the project in an environment that was only just getting used to the idea of foreign investors coming in. It should have demonstrated flexibility and responsiveness, and not have been overly constrained by the assumption that ‘a contract is a contract.’

Case study: Union Carbide

Union Carbide and Bhopal in India

The case of the pesticide company Union Carbide and its subsidiary Union Carbide India Limited (UCIL) in Bhopal, India, is one of the most tragic cases of foreign investment in India. The chemical plant in Bhopal suffered a catastrophic accident on 3 December 1984 leading to the death of many people. The case is a timely reminder of the dangers of setting up a toxic industry in an imperfect institutional environment.

In the late 1970s a pesticide plant was set up in the state of Bhopal in India. The plant’s establishment was the result of increasing demand for pesticides by Indian farmers. UCIL was the operator and manager of the plant in India. Its parent company in the US held a 50.9 per cent stake in the Indian company, while the rest was owned by financial institutions and private investors in India.37

On the evening of 3 December 1984 there was a deadly accident at the plant, resulting in several thousand people being killed and many more permanently injured.38 The plant produced MIC, which is a toxic chemical used in pesticide production. On 3 December a chemical reaction had catastrophic consequences when a large amount of water entered a storage tank containing MIC, causing a deadly gas leak. The leak was discovered when plant workers started experiencing a burning sensation in their eyes. No timely action was taken before it was much too late, with a large amount of the gas having leaked from the plant. At that time, the city of Bhopal had a population of around 900,000 people and thousands of people were killed during the accident.39 The exact number of the dead is unclear as numbers vary from source to source, but according to government estimates approximately 6600 people died and more than 70,000 were injured.40

The disaster highlighted several issues of deficiency in relation to Union Carbide’s operation in India. First of all the plant was not effectively managed or well run. Secondly, the regulatory environment in India was inefficient and did little to ensure that the plant complied
with the relevant laws and regulations. The disaster also led to a never-ending legal dispute between Union Carbide and the Indian authorities, a dispute that continues today.

Management and communication

Critics of Union Carbide argue that safety and operational standards were poor at the Indian plant compared with another plant operated in West Virginia in the US. An investigation had showed that the plant in West Virginia conformed to higher safety and operational standards. Furthermore, there are suggestions that there were controversies at the designing stage as to the amount of storage capacity at the plant, where Union Carbide Corp., in contrast to its Indian subsidiary, pushed for an irresponsible storage capacity of Methyl Isocyanate.41 Furthermore, Trotter et al. argue that as Union Carbide was planning to close its plant in Bhopal, it was less occupied with quality and safety regulations there. Lack of attention to managerial and operational issues implies that there was an increasing risk of safety violations, and the potential for an act of sabotage act. It has also been suggested that the quality of the workforce at the plant was less than ideal. It has been argued that as the plant did not make much profit, Union Carbide used inexperienced workers in an attempt to cut costs.42 During the early stages of the operation, technical and engineering staff from the US had worked at the plant to commence operations and educate the Indian staff. The staff had been given permission by the Indian government to work at the plant but had to leave as soon as they were no longer needed.43 Because of strict regulatory regime, some analysts maintain that the Indian staff were not properly trained to operate the plant. After 1982 no American engineers were allowed to work at the plant site. The unqualified staff at the plant have been alluded to by several authors.44

A further problem in this tragedy was the poor communication with various stakeholders in the project. In fact, Jasanoff emphasizes that lack of information prior to, but also during, the accident was the root cause of the catastrophic consequences of the disaster.45 Among other things, Union Carbide has been criticized for not informing stakeholders and, in particular, the public about the risks of its operations. While, people living next to Union Carbide were warned about the potential dangers through newspapers by critics, according to Tropic’s case study residents ignored warnings and officials discarded them as being exaggerated.46 According to Trotter et al. information through mass communication was difficult because of the poor farmer population in Bhopal. ‘Information via mass communication is difficult to distribute to the
Indian population because the majority of Indians are poor farmers. Educating the Indian people is an arduous task as they do not view education as a priority. These problems proved to be significant in the strategic management plan of action for the Union Carbide subsidiary.\textsuperscript{47}

More specifically, they argue that illiteracy was among the external threats facing Union Carbide in its operations. It seems, however, that it should have been possible to disseminate information about the dangers and risks despite the poor and illiterate local population. Although an illiterate population may have been oblivious to some of the warnings given by critics in newspapers, Union Carbide should have reached these people through other communication channels. Instead it did a lot to hide important information about its dangerous plant.\textsuperscript{48} Relevant information accompanied by effective regulatory action may have prevented the settlement of shanty towns next to the plant. However, in the time leading up to the accident the public had been warned about the plant and the lack of safety, but the threats were not taken seriously.\textsuperscript{49} People probably either did not fully comprehend the dangers or understand what they could do to minimize them.

Cross-cultural barriers between the Indian subsidiary and the parent company were also present and further aggravated the problem of the plant’s effective management. Cultural differences were found in different norms, values, and expectations, between the subsidiary and the mother company in West Virginia. An example of this deficiency in communication between parent company and Indian-based subsidiary was that as the operational manual was written in English, the parent company assumed that everyone at the plant read and understood English.\textsuperscript{50}

**Institutional environment**

As there is weak enforcement of rules and laws in India, it is likely that the parties will not necessarily abide by the formal requirements. This argument has been put forward by scholars in an assessment of the reason for the leak at the plant. While it was the responsibility of Union Carbide to run the plant according to safety standards and rules, neither the state of Madhya Pradesh nor the central government enforced the laws and regulations that should or could have prevented a disaster.\textsuperscript{51}

It has also been maintained that the legal and regulatory system in India was not adequately developed to cope with all types of environmental contingencies. Sam et al. speak of a weak Indian safety culture, which was exposed because of the disaster. The law did not distinguish between hazardous and non-hazardous facilities, and there
was no demand for an emergency response. Regulatory bodies did not have the power to close facilities that could presented a near and imminent danger. Minor penalties for breaking the law meant that firms saw no reason for compliance, as it was financially preferable to ignore regulations. Further, the legal system at the time did not have adequate mechanisms for distributing resources to the victims and was incapable of attributing criminal liability.\textsuperscript{52} According to Jamie Cassels, Indian legislation at the time of the Bhopal disaster was not up to the challenges posed by industrial businesses. The legislation was focused on private property and protection of law and order, issues that were relevant during colonial times.\textsuperscript{53} According to Cassels, the social segment, the middle class, which will usually fight to further environmental and industrial protection, was still very small at the time of the Bhopal.\textsuperscript{54}

Since the accident, many different legislative initiatives have been put in place in terms of how to deal with the chemical industry, but while extensive legislation, generally considered to be of the same standard as in developed countries, was introduced in 2000, the enforcement and implementation of these rules still seems deficient in India. It is therefore not hard to imagine that similar chemical accidents could happen again.\textsuperscript{55}

Rules and regulations at the site were also not upheld in terms of safety. This may exemplify the very different institutional environments in India and the US. For instance, land-use regulations were missing, which also meant that shanty towns moved closer to the chemical plant. The company could have taken precautions in analyzing the institutional regulations or the lack thereof in Bhopal. In any case it should or could have been alert when it found that people were moving closer to the site.\textsuperscript{56} In his very critical article ‘the second tragedy of Bhopal,’ John Steiner argues that the regulatory and institutional system in India was to blame for the accident in Bhopal. As the law in 1984 did not allow, for a foreign company to manage a company in India or for employees to be foreigners, Union Carbide was prohibited from owning and managing the Bhopal plant directly. Instead it was managed by the Indian affiliate UCIL, in which Union Carbide held a 50.9 per cent stake. Steiner argues that Union Carbide did not have any mechanisms to ensure that the plant was being managed in a way in which safety considerations were paramount. According to this line of argument the accident was therefore a result of India’s nationalistic policy at the time,\textsuperscript{57} which did not allow for 100 per cent managerial control.
Political and public environment in India

The tragedy of Bhopal was most likely also part of a political ploy in India, whereby Union Carbide was used as an instrument of gaining popular support in the upcoming election. The local state government was accused of poor regulation of industrial safety in terms of operations at the plant, and in relation to the fact that so many people were living illegally at the plant site in slum areas. After being confronted with these allegations, the chief minister of Bhopal state government, Mr Singh, ordered that Union Carbide’s chairman, Mr Andersen, and other executives of the company, be arrested. Some have interpreted this as a political move, whereby the chief minister tried to pass on the responsibility to Union Carbide removing any attention from the regulatory inefficiencies of the state government. Mr Anderson and the other arrested executives were soon released by the central government, as Mr Gandhi, India’s prime minister at the time, was afraid of adversely affecting the relationships with international companies and diplomatic ties with the US.58

There are conflicting accounts as to how the government dealt with the case. Some believe that it has not done enough to get full justice for the victims, while others maintain that by accepting responsibility for the victims’ lawsuit and trying to prosecute Union Carbide for liability, the government has done a lot for the victims.59 Yet others believe that the Indian government has gone to great lengths to stop Union Carbide’s attempts to remedy the disaster in order to appear tough on the ‘bully’.60 Accordingly Steiner argues that, ‘For political reasons, Indian officials needed to be tough on “killer Carbide”. Carbide sent medicine and doctors. It offered to build a new hospital and an orphanage. All was refused. When Carbide built a rehabilitation center for gas victims the government bulldozed it.’61

Despite the officials of Union Carbide meeting the city and the media pro-actively after the accident, reliable information about the accident was missing or withheld. This was largely due to the poor communication network that the local plant had with its headquarters in the US, which meant that Union Carbide was not able to manage the crisis properly. According to sources the company was afraid to give out any information that it might not be certain of; this in turn was interpreted by the public and the media as arrogance and concealment of information.62 Further, it seems that company officials stated that the gas leak at the plant was not toxic, when in fact it was highly so.63 Thereby Union Carbide failed to enter into an effective dialogue with the different stakeholders. Additionally, little was known about the consequences of the chemical
reaction and how to respond to it, which meant that doctors were handing out the wrong medicine. There were so many malfunctions in the processes and management of the plant and the state of emergency that it could hardly have been managed in a more negative way.

Had it provided more information, and appeared less secretive, Union Carbide may have been perceived more positively.

The legal environment and consequences
The legal disputes after the gas leak have often been called the second tragedy of Bhopal. This is an apt description. Attributing responsibility for the accident has proved difficult and it is an issue that even today, 26 years later, is a point of dispute. According to Union Carbide it is not responsible, as it is convinced that it was impossible for the chemical reaction to be an accident. It argues that someone intentionally caused the leak, someone who felt resentful towards the company. The company suggests that it is impossible for so much water to enter the storage tank unless it was intentional. Furthermore, it has also maintained that as it was not managing the company in India, it cannot be held legally responsible for the accident. On the other hand, the city and the victims feel that Union Carbide should be held accountable, as it owned a 50.9 per cent share in the company. Critics of Union Carbide further maintain that a company is not without responsibility simply because an operation is managed by a subsidiary. In 2001 Union Carbide was acquired by Dow Chemical, which also raised the question of liability. There was a demand that Dow would continue to clean up the site of the plant. Dow argued that it had already spent a lot of money cleaning the site, and that the local government took over the site in 1998; therefore it was responsible for it from this point forward. However, opponents argue that the site should be returned in the same condition as it was when it was leased to Union Carbide.

Another conflict revolves around the issue as to where the case should be resolved. Union Carbide maintained that its Indian subsidiary was separate from the parent company and therefore held the primary responsibility. According to the Indian government, the parent company was liable as it owned, operated, and constructed the plant in Bhopal. It was decided, however, that the trial should be held in India, as the accident took place in India, the plaintiffs were Indian, and Union Carbide’s US connection with its Indian affiliate did not appear to give it an unusual degree of control.

Controversies as to the jurisdiction of the trial reflected the different legal systems in the respective countries. In the US there was a longer
tradition for ruling harshly on cases resembling that of Union Carbide, and there were also greater chances of getting exemplary and punitive damages. This was not the case in India, where issues of exemplary and punitive damages are rarely allowed and rulings are usually not tough. Thus, for Union Carbide it was preferable for the legal action to take place in India rather than the US.\textsuperscript{68}

While Union Carbide initially fought to have the trial in India because of the lenient damages there, it soon became fed up with the Indian judicial system because it could not get its settlement passed with the Indian government, which was now suing the company on behalf of the victims. Union Carbide had offered $350 million in settlement, while the government had sued for $3 billion. This was of course a huge source of frustration for the company, and it felt that had it not been for the government, it could have settled the cases years ago, not least for the sake of the victims.\textsuperscript{69} In an attempt to settle the case once and for all, Union Carbide slowly started talks, case by case with individual victims. The main purpose of this approach was to push the process for a settlement with the Indian government. However, the government’s response was to ask the court to stop Union Carbide’s dealings outside of the court in the US, and so it did. Thus, while initially wishing for a trial in India, it seems Union Carbide after a while was most likely wishing that the trial had been tried in the US.\textsuperscript{70} In 1989 an out of court settlement was made after strong encouragement by the court, in which Union Carbide ended up paying $470 million. There were many appeals by victims against the settlement in 1990, but it was upheld by the Supreme Court of India in 1991. The court ordered the Indian government to provide medical insurance policy from the settlement funds for future victims of chemical pollution, and Union Carbide was requested by the court to fund voluntarily the cost of a new hospital for the victims in Bhopal. From 1995–99, a new hospital was built by a charitable trust established by Union Carbide.\textsuperscript{71} The hospital has since been criticized for lacking proper equipment.\textsuperscript{72}

Since there is a large gap between what the government filed for and what has actually been settled for, there is of course a great risk that the victims and Indian citizens may feel betrayed by both the government and Union Carbide. An important issue for the victims was to attribute responsibility for the accident. The Indian government initially charged Anderson, Union Carbide’s chairman, with culpable homicide. In 2002, the it reduced the charge to committing a rash and negligent act. This resulted in protests and hunger strikes by victims and sympathizers.\textsuperscript{73} Because the case was settled out of court, the issue of liability was never
determined. Further, the Indian Supreme Court ordered civil and criminal charges against Union Carbide to be dropped and ordered immunity for future prosecutions by victims.  

However, in a recent development the Supreme Court has decided to reopen the Bhopal case. This was done at the behest of the Indian government and in reaction to the 1996 decision, which had reduced the severity of the charges against the accused. The Supreme Court will examine if the original charge of ‘culpable homicide not amounting to murder’ should be reinstated. At the same time the Indian government, in response to domestic political pressure, is seeking to reinitiate proceedings for the extradition of Andersen. This despite the fact that previous extradition attempts have led to nothing. They may also increase the compensation to victims of the accident. Indians also perceive a double standard in the tragedy, insofar as that while the US government pushed BP to establish a compensation fund of US $20 billion for Deepwater Horizon, Union Carbide has paid only US $470 million for a disaster of major proportions.  

The great disputes during the trial have probably further infuriated the victims of the accidents, as the perception of Union Carbide is that it does not want to take responsibility for the accident. The amount of money is important for the victims, but attributing responsibility is even more important it seems.

**Discussion**

It might be a matter of debate if the settlement of $470 million was enough to cover damages and deaths among the Bhopal residents. It is also a matter of some discussion as to which factors influenced the final negotiation outcome. On the one hand, local government may secure political advantage for itself by distancing itself from Union Carbide and threatening the company so as to gain a better settlement. On the other hand, the period around and after the accident saw some changes in attitudes towards foreign investments. Given India’s poor reputation abroad it would not be wise to completely scare off potential foreign investors and joint-venture partners in India. The settlement with Union Carbide may therefore also be an attempt to enhance India’s reputation among foreign investors. It is also the case that Indian farmers would continue to be dependent on pesticides provided by the chemical industry to secure their agricultural livelihood. The influence that Union Carbide has as a producer of pesticides probably gave it some power in terms of negotiating a deal with the Indian government. Even though Union Carbide’s reputation may have been destroyed in India, it could have been worse for the company had the accident happened in the US,
where it would have been charged with exemplary and punitive damages, probably spelling the end of the company.79

When looking at what went wrong in Union Carbide’s operations in India, one of the big pitfalls of its operation was that it did not assume operational responsibility for the plant. It seems that it either assumed that the rules and regulations were being implemented, or alternatively did not care about implementing them. The problem was compounded by the fact that the local regulatory authorities did not do their job either. The tragedy would most likely never have happened in a more perfect institutional environment, however, Union Carbide was not prepared for the enforcement flaw by local officials.

Another issue to consider is that Union Carbide was not prepared to be used in a political game and became part of the local government’s nationalist agenda. Its failure to have an emergency plan, and an open and planned communication strategy it only made things worse for it. Subsequent to this, its bad image snowballed and in the subsequent legal foot-dragging Union Carbide appeared to be a company without much compassion for the Bhopal victims. It therefore reinforced the stereotype of an international company being essentially exploitative in character. The colonial experience has made Indians very wary of foreign investors and foreign investment and while this attitude is now changing (especially post-1991), foreign investors need to be careful of the negotiating strategy that they employ lest they reignite old sensitivities. Union Carbide lost its legitimacy by failing to recognize that in an environment such as India’s, foreign investors are often held to a higher standard than local companies. International companies must recognize the importance both of attaining and maintaining legitimacy in an international environment. In order to do this effectively they must fully understand the intricacies of the local political, cultural, and legal environment, and must be very cautious of the assumptions that they make. They cannot assume, for example, that the relevant rules and regulations will be followed or effectively implemented by the regulatory authorities. In the event of a dispute or a conflict they should also be prepared for protracted negotiations and recognize that if a dispute gets politicized its resolution will be far from easy.

Case study: India and the WTO

In contrast to China, India is a founding member of the General Agreement on Tariffs and Trades (GATT), which was the predecessor to the WTO. India thus has a long history in being a member of this
international organization. The focus of this case study will also differ from China, in that it will not be on India’s accession, but more on the history and general relations that India has had within a GATT/WTO framework. There are many examples that highlight a particular pattern in India's negotiation strategy in GATT/WTO.

India became a member of GATT in 1947. It has been at the forefront in promoting the agenda of developing countries in GATT, and in confronting the inequalities which it saw as being deeply embedded in GATT. India and other developing countries felt that developing countries could not compete on equal terms with developed countries, and for that reason could not accept a similar level of obligations in terms of tariff reductions. A consequence of this was that India did not open up its markets for international trade. It did not want to lower its tariffs but at the same time expected to gain access to the markets of developed countries. According to Narlikar, this strategy had little consequence for India, as 'Indian development policy at the time was based on models of import-substituted industrialization and aimed towards self-sufficiency [...] It further allowed India to free-ride on the tariff reductions that were negotiated among other countries, benefit from the Special and Differential treatment provisions, and gain the policy space that it required to manage its growth and development along the lines that it had chosen.'

In general it was difficult for developing countries to gain a footing in GATT. GATT was mainly of interest to developed countries, because of its commitment to free trade. During the 1950s and 1960s many developing countries followed protectionist policies, and for that reason the principles of GATT had little appeal to them. Although developing countries had the option of building a coalition among themselves, they never really offered serious opposition to rich countries. Generally, the institutional conditions in the GATT did not promote participation by India and other developing countries. Many different constraints are essentially built into the process of decision making in GATT. One of these obstacles lie in the consensus-based procedure of GATT, under which countries have to object actively in order not to give consensus. This was a problem in the sense that many developing countries were not always able to be present at the meetings. Further, as described by Narlikar, because any objection had to be given openly, many countries feared to declare their disagreement. Also, the consensus-making process and implementation of agreements required diplomatic skills and resources often not available to developing countries. According to Narlikar, developing countries were often not included in the decision-making
process before the deal had been made. This was mainly because of the importance of informal decision-making processes in GATT, whereby rich countries had their own club and were building consensus whilst bypassing developing countries.86 Thus developing countries often lacked the inside knowledge of these processes to properly contribute to the negotiating process in the GATT.87

As the developed countries had a disproportionate share of international trade, they had sufficient power to determine the rules of the game. Developing countries by contrast, had little influence to exert power. Naturally, the challenge was greater for developing countries. This was especially true in the sense that deals were often based on single issues and not general assertions, where developing countries could more easily agree.88 While small coalitions based on specific issues offer a better opportunity to achieve individual national interests, this would be at the expense of a wider coalition among developing countries. Thus, developing countries often found that an issue-specific agenda would undermine their bargaining power because it would split up the broad coalition.89

It was not till the 1980s and during the Uruguay Round in 1986 that something serious at stake for developing countries began to emerge. With the introduction of the service agreements for Trade-Related Intellectual Property Rights (TRIPs) and Trade-Related Investment Measures (TRIMS) the WTO became more detrimental to developing countries, which found that it would soon come to influence their domestic markets. They would have to get involved in the negotiations if they wanted any say in the outcome.90 It was mainly the issues of intellectual property, trade-related investment, and services that concerned developing countries. Services were especially important to Brazil and India.91 Developing countries’ concern in relation to services as part of GATT was an issue of ‘national security and sovereignty, along with their economic concerns over protecting infant service industries.’92 Liberalization of services would further, in the case of India, involve removing regulatory constraints and implementing a commercial liberalization of the service sector. The service sector involves railroads, airlines, telecommunications, shipping, and so forth; in India several areas of these were reserved for the public sector. Furthermore, the government in some industries, such as telecommunications, monopolized services.93 The G10, formed under the GATT as a coalition of developing countries, among others led by India, refused to implement services in any treaty. In order to try to loosen up the deadlock, another informal group among developing countries tried to create a more constructive attempt at integrating
services in a proposal, while meeting the interests of developing countries. The G10 would not engage, and made its own proposal with no mention of services. In the end, the integrative approach won support by a large part of developing and developed countries, and India was one of the only countries that stubbornly refused to engage in any negotiations, thereby excluding itself from influencing treaty negotiations. The others garnered some concessions by engaging in bargaining.94

In the various WTO negotiations India has often stood its ground, while its coalition partners have often settled for deals. This failure to engage in integrative bargaining can be attributable to the political winds prevailing in India at that point in time. The government's industrial policy framework supported Indian companies over foreign companies, even though this was not stated explicitly in any official documents. Protectionism has been an important factor in India's opposition to the free trade framework promoted by the WTO.95 Therefore Indian domestic policy has also had a great influence on its international trade engagement, or the lack thereof. The ministry in charge of negotiations in GATT and WTO likewise is rooted in a national policy, focused on self-sufficiency rather than international dependency.96

In the early 1980s it seemed that India could no longer afford to continue its protectionist policies. At this point in time the International Monetary Fund (IMF) provided the country with the largest conditional loan in the fund’s history.97 The requirements for the loan were that India would open up its economy to foreign investments and trade. The public industrial sector was also to be cut down and it was to be made easier for the private sector to operate in the Indian system. Although the government did not have any alternatives to the conditional loan, the new economic policy shift created domestic opposition in India among politicians and the business community. Nevertheless, because India quickly recovered from the crisis to a great extent it managed to avoid any drastic policy changes during this period.98

In terms of its influence on WTO engagement, however, the domestic opposition should not be underestimated. According to Sen, there is a certain consensus in Indian policy of what purpose economic reform should serve. Accordingly, “This consensus, which is also constitutionally shaped, prioritises social and economic reform and explicitly requires that economic policy serve reformist social and political objectives.”99 It could therefore be argued that economic growth, based on international trade is not part of the Indian consensus model.

During the 1980s, deregulation and liberalization were promoted through the Washington consensus model in IMF and the World Bank,
and eventually gained some influence on decision makers in the Ministry of Finance and on leading business figures in India. It was, though, not until 1991 that Indian financial policies were substantially altered, when the country faced a critical financial crisis. While India was not restricted in its financial policy by any formal program of IMF after 1993, it did to a large extent follow recommendations by the IMF and the World Bank during the 1990s. According to Degnbol-Martinussen, India followed the recommendations in a very selective manner in order not to provoke any resistance within the country.

The economic liberalization of India was supported by foreign and Indian investors, at least at the beginning of the process in the 1990s. This was basically because business opportunities improved in India after 1991. The business community also supported the agreements signed during the Uruguay Round and India’s entry into the WTO in 1995. Nevertheless, around the mid-1990s the optimism changed in the business environment, with some voicing concern that foreign businesses were being favored over domestic businesses. The criticism thus pointed towards more protection of Indian industries, with the argument being that policies biased towards domestic industry was essential.

During the mid-1990s WTO came to exert pressure over India. The US was at the forefront of this, arguing that domestic regulations were too biased against foreign investments. This was in spite of the fact that India had obligations under the TRIPs and TRIM agreements, which were designed to facilitate international trade. On the other hand, many developing countries, including India, felt that they were treated unfairly, as they were only pursuing industrial progress and development. Basically, Indian companies felt that they had not been given enough time to adjust and prepare for the new economic conditions and were thus competing on unequal terms with international companies. Developing countries had been given a number of years to adapt their domestic apparatuses to the new agreements. The external pressure mounted as deadlines for compliance with WTO agreements came closer. It was this pressure, among other things, that led developing countries, with India at the forefront, to form the Like Minded Group (LMG) in 1996. The main agenda of the group was its difficulties with implementing agreements from the Uruguay Round, because of lack of resources and capacities. Further it objected to rich countries’ lack of implementation of certain issues. While developing countries had opened their markets considerably and accepted new rules under intellectual property, they had not received the commercial gains that they
were promised. The group therefore tried to stall new negotiations in the WTO until issues of implementation of agreements from the Uruguay Round had been settled. Developing countries complained that they did not stand a fair chance of implementing agreements from the Uruguay Round because developed countries had not kept their end of the deal, thus increasing implementation costs. They therefore demanded that no new issues could be negotiated in a new round. The LMG was highly successful in functioning as a block and opposing new initiatives before the implementation of previous agreements from the Uruguay Round. It even offered detailed initiatives on how to implement and address issues of controversy such as TRIPs, TRIM, agriculture, and many other issues. Nevertheless, the coalition stuck to a highly distributive strategy, in which it issued demands but had no intention of negotiating with developed countries. This tactic has also been blamed for the LMG’s lack of agreement with developed countries and ultimately its dissolution in 2001. Naturally developed countries would not give in to the ultimate demands issued by the LMG and instead seized the opportunity to suggest some integrative deals with groups within and outside the LMG. Because LMG failed to respond as a collective to these proposals it had the effect of splitting up the coalition. Eventually, developing countries caved on demands, individually, and in small groups, as they realized that there would otherwise be no deal in Doha. Once again, however, India was left behind while its coalition partners were ensuring themselves bilateral deals with developed countries.

During this period domestic opposition was also increasing in India. A lot of the reforms that had been implemented in terms of trade liberalization gradually built a domestic opposition to the agreements made under the Uruguay Round and a general opposition towards the WTO. The mounting opposition was probably testimony to a lack of industrial development and progress in India despite the economic liberalization and WTO reforms. The opposition is best illustrated by the 1998 election where the Bharatiya Janata Party, with its very nationalist and conservative agenda, won. The Bharatiya Janata Party was more hesitant towards economic reform, and together with the business community it tried to stall economic reform against WTO prescriptions.

An exception to the rule of the negotiation pattern of developing countries was the G20 coalition, where the developing countries managed to stick together. This coalition was a result of the 2003 Cancún Ministerial Conference, where developing countries refused to support an EU–US paper on agriculture if the parties did not recognize
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developing countries’ concerns. While the coalition managed to stand its ground, Narlikar raises the good point that India still did not manage to make any integrative agreement. The success of the coalition only pertains to the fact that it managed to stay together, which is of course a success but without any concrete trade deals. Thus India did what it had always done – resisted any bargaining and deal making.

Analysis of negotiation strategy

The general picture of India’s membership in GATT and WTO therefore suggests the frequent use of a distributive strategy in negotiations. The implication, therefore, is that it has not exerted much influence on the actual outcome of GATT and WTO agreements because it has, to a large extent, been focused on securing a protectionist agenda. But India’s WTO membership is perhaps merely a reflection of its domestic policy, and the influence exerted by the Indian public. Several reasons may be put forward to explain why India has often used a distributive as opposed to an integrative negotiation strategy.

First of all, India’s colonial past may serve as a framework for explaining why it has insisted upon being self-sufficient and protecting its markets from international trade through tariffs and quantitative restrictions. The historical memories of colonization have probably left some scars and a need to ensure that India is never exploited again. There is a deeply held fear that the WTO/GATT institution has no other agenda than taking advantage of Indian markets. While this to some extent may be the brutal truth of free trade, the WTO framework also allows for integrative agreements, where a give and take process can take place. This was for instance the case for many countries in and outside the LMG coalition. In 2001 the African WTO ambassador explained how it was time for developing countries to offer some concessions to developed countries, as there would otherwise not be any agreements. Several ministers from developing countries held informal talks with their counterparts from developed countries in Singapore in October 2001. All along this process, it was a common view among delegations that India was isolating itself. According to Narlikar and Odell, ultimately many smaller countries were offered deals of special and differential treatment, and developing aid. One of the deals offered was the TRIPs and Public Health agreement, which essentially stated that intellectual property rights should not stand in the way of public health, and so countries should promote access of medicine to all. In return several developing countries gave up their opposition to negotiations on industrial tariffs, environment, trade and investment, customs
issues, and trade and competition. There were also many individual
deals offered to developing countries. By consistent refusal in WTO,
India may have protected itself from WTO concessions, but achieved
little influence on agreements because of its nay-saying strategy.

According to Sen, India’s reluctant engagement in WTO is also to be
found in the institutional environment that is responsible for negoti-
ating international trade agreements. Accordingly, the Ministry of
Commerce and Industry is in charge of India’s international trade talks,
but he argues that this is also the institution with the strongest roots in
India’s political history and culture, which has formed a special consen-
sus of a specific ‘development model’ in Indian society, as mentioned
previously. This strong bond, he argues, has created an institutional
paradox: ‘This means, in simple terms that the ministry that negotiates
trade agreements internationally (the MOCI) is part of a political culture
that does not apply free trade principles internally. Policy, therefore,
has to be made in a twilight world that is deeply schizophrenic: it is
expected to engage constructively with the international community
with respect to the multilateral process while simultaneously appearing
not to.’

According to Cohen, the Indian opposition to engage in integrative
agreements is to be found in a very conservative institutional bureauc-
ancy, of which India’s Foreign Ministry is a key player. Cohen probably
comes closest to giving us an explanation of the Indian bureaucracy
and thus explaining the Indian distributive negotiation strategy: ‘Senior
civil servants pride themselves on their social status, bureaucratic con-
trol, and policy influence, not their material wealth. They have an
almost puritanical view of decision making process and are wary of the
corrupting power of money. Private corporations and foreign govern-
ments are viewed with deep suspicion. The best and the most influential
civil servants see themselves as islands of honesty and rectitude in a sea
of graft, as prudent men (and a few women) upholding a 200 year tradi-
tion of distinguished public services.’

While India’s distributive strategy in the GATT/WTO setting is
possibly part of India’s self-sufficiency strategy and an opposition to
free-trade principles, according to Narlikar, findings from interview
statements also indicate that it is better for a minister to come back
from an international negotiation ‘empty-handed as a wounded hero,
rather than to come back with something after having had to make a
compromise.’ This strategy is found to be the case across political
parties in India, and the reason should therefore be found in the politi-
cal culture and not simply within a specific policy program. Again the
country’s colonial past may explain the uncompromising nature of the
Indian electorate and its expectations of policy makers. By position-
ing itself as an intransigent nation in the WTO, India is proclaiming
that it can take care of itself and that it will not be pushed around by
other nations’ trading agendas. Further, the argument that no deal is
better than a compromise is supported by Cohen’s claim, that ‘Indians
are patient negotiators who will wait until the terms improve. They
rarely feel pressed to reach an agreement because of domestic politics
or bureaucratic compulsions; indeed, the Indian system is agreement
averse. Indian diplomats do not put their careers at risk by failing to
reach an agreement.’

The old bureaucratic system that continues to influence Indian foreign
policy thus may still influence on how India engages and negotiates with
the international community and in WTO relations. The lack of reform
and lack of request for reform from within the bureaucracy is therefore
probably part of sustaining a distributive strategy in the WTO.
Case study: Google-China dispute

The case of Google is a description of the difference between China and the United States and how the upcoming conflict is going to evolve. Until now the internet has been controlled by American companies but China wants to have more influence at least on websites in China.

In addition it describes an American multinational company operating in the institutional environment of China, which is almost different from the American environment where the company is headquartered. The political system in the two countries is also very unlike: the tradition in China of a strong state contrasts with the US tradition of a minimal one.

This case clearly exemplifies the power game between the Chinese state and a multinational company, as well as the issue of censorship of a Western multinational in China. It furthermore, illustrates the failure of Google to adapt to its Chinese customers and their culturally influenced search patterns and needs. The lack of public support and customers is also likely a contributing factor in Google's weak position in relation to the Chinese state, which essentially cost it its Chinese adventure.

The search engine Google

As Google is the number one search engine used in the West it was only natural for it to start its venture in China. The story behind the Google success in the West is a story about two PhD students, who had an idea of how to organize the information that was floating around on the web. Many people laughed when Google claimed it would revolutionize the usage of the web.¹ But indeed it has transformed the way search
Negotiating in China

engines organize information, and information is today much more easily accessible worldwide because of Google's technology. Free flow of information was also the company's mission, a mission that it would be confronted with in its China adventure, because the Chinese government wanted some control of information flow. From the very beginning Google was successful and attracted enormous amounts of capital for its business. While competitors tried to grow through advertising, Google became popular through word of mouth. In 2004 the company launched a public offering and the company mission was clarified through the motto 'Don't Be Evil,' which essentially meant that Google sought to make the world a better place by making information available. At the same time the company also put a strong emphasis on the issue of user privacy, ensuring that its users could rely on the protection of their privacy while surfing the net and using Google's email service. In 2005 its value system was tested when the US Department of Justice requested that it turn over a random sample of one million searches in an investigation of child pornography on the Internet. Google refused to do so, while MSN and Yahoo! had cooperated in the investigation. Google in effect proved its reliability towards its users.

Google in China

Google's insistence on protecting user privacy and its mission of making information available to everyone were contributing factors that challenged its decision to enter China, where it would have to compromise those same values. In the year 2000 Google already offered a Chinese search service, but the server was operated from the US. Google encountered censorship of its search engine two years after launching it in China. In 2002 the search engine was blocked by the authorities and users were redirected. It is unclear what actually changed, since two weeks later users were able to access the site again. There are, though, several indications that despite Google's statements of the contrary, search results were now subject to censorship. While Google had offered its services to the Chinese prior to 2006, it was not until then that it actually put up a server in China. If it wanted to compete with Baidu, the most popular search machine in China, it would have to become more local to its Chinese customers. However, along with this decision Google would also have to subject itself to the Chinese authorities' censorship rules and, by the same token, accept those rules. This move meant that Google, in the eyes of many critics, had caved over its values of providing information for everyone. While many other foreign companies have been subject to Chinese censorship
regulations, critics were more skeptical about Google, both in terms of the values that it set for itself but also because it handles information directly and not simply the infrastructure surrounding it. Many international companies have had to adjust to Chinese censorship rules, but there is a greater tolerance towards these businesses. A company like Google deals with the Internet, which is inherently a free media, where the public have very few limitations. Google therefore also suffers far more public criticism when it allows censorship.8

When entering China, Google stated, ‘in order to operate from China, we have removed some content from the search results available on Google.cn, in response to local law, regulation and policy.’9 It defended this decision by arguing that, while not perfect, the Chinese people would now have access to information, and that this access would eventually help bring down the barriers to the free flow of information.10 This view is supported by Thomas Hazlett, who argues that ‘the agreement will push modern communications yet further in a basically authoritarian society. That triggers an underlying dynamic that ultimately, will undermine restrictions, allowing civil liberties – not Chinese government censors – to triumph.’11 Others contend that Google’s aim is simply to make profit, and that they could therefore not afford to reject a position in the Chinese market. Google’s dilemma consisted of a clash between business and ethics. At the time of entrance in the Chinese market it argued that this was the lesser of two evils. Microsoft also argued along these lines when it stated that advancing liberal technology would demand a price, the price being censorship.12

Google clearly knew the risks of its Chinese venture when it started operations in China in 2006, as it had experienced censorship before and had fought for a long time to overcome its reservations about the Chinese regulations.13 According to Jason Dean and Kevin Delaney Google in their entry plan in 2004 had suggested different negotiation strategies with the Chinese government to overcome some of the obstacles of censorship. Among others these included offering the Chinese government free marketing and explaining to Chinese users when they were being redirected. It is unclear what exactly happened to these offers, but something suggests that they were not accepted.14 Google was aware that it would be difficult to maneuver between public popularity and Chinese rule.

Institutional environment

The other party in the case, the Chinese government, while eager to take advantage of the economic gains of information technology, still
views the free flow of information as a threat to the public order. With information technology it, like Google, finds itself in a dilemma, and faces a bigger challenge than previously to control information output. The challenge is posed by the introduction of search engines like Google, Yahoo!, and the Chinese search engine Baidu. The censorship, however, has not proven to be an impossible task as might have been expected.

The Chinese censorship apparatus is comprehensive and tactically smart on the Internet. An example could be as mentioned by Kathrin Hille and Richard Waters that the Chinese government, in order to divert attention from critical issues under censorship restrictions, is lax on the enforcement of property rights, thereby allowing internet users to spend their time and effort on downloading music and films illegally. By doing this, allegedly, users will not focus their attention on restrictions on retrieving information on the Internet. According to sources, when critical debates get heated in forums and blogs, the government will appoint commentators to appeal to people's nationalist emotions. Based on this information, there is a clear picture that the Chinese government will go to great lengths in implementing censorship regulations.

In 2006 a spokesman for the Chinese foreign ministry defended Chinese censorship, stating that ‘China manages the Internet according to law and order to limit as much as possible the spread of illegal, immoral or harmful information.’ The Chinese government further argued that its practice of removing content from the Internet was consistent with international practice of removing ‘harmful’ and ‘illegal’ content from the Internet. Besides enforcing censorship, the Chinese government also tightened its control over domain names on the Internet in 2009. This was also done in an attempt to control and discourage sensitive information output by civil agents on the Internet by banning people from registering an internet domain name, without presenting a business licenses and a shop. It has further closed several social media websites, such as Facebook and YouTube. According to the government, the disruption of these sites was a result of increasing social unrest, which amounted to ethnic riots, some of which originated on the Internet.

While China views the Internet as an opportunity for economic growth and better education among its citizens, it also sees it as a threat to party control. The Chinese government is used to perceiving the classic media outlets as a means of gaining popular support and spreading information, but the Internet does not fully complete this role. It therefore tries to keep control over the various media outlets.
The cyber attack and conflict

In January 2010, after having had its own server on Chinese soil for four years, Google was attacked by hackers. The Chinese government was accused of the attack as part of its censorship regulation. Simultaneously, several Google email accounts were hacked, of which many were allegedly accounts belonging to human rights activists in China and other countries. Google threatened that it would stop censoring its Chinese search engine if the hacking continued, thereby escalating the conflict. Yahoo! supported Google’s position, as it had been hacked by the government itself. Access to user information was exactly one of the things that Google had protected vigorously during its court case with the Justice Department in the US, and why it had also previously stated that it would not set up email accounts in China if there was any risk of hacking. Now four years later it became clear that Google could not deliver its promise of protection.

When the hacking of Google servers was uncovered, the conflict of censorship was not only an issue of conflict between Google and the Chinese government. The censorship soon took shape as a political conflict, as the US government could not simply ignore the matter. However, it was tricky for the US to take a stand on the issue as it would place it in a politically sensitive situation. The statements issued by the State Department were that on the one hand, the allegation ‘raise very serious concerns and questions’ and that ‘we look to the Chinese government for an explanation.’ On the other hand the US stated that the dispute was no different from ‘the range of issues’ that usually characterize the relationship between the US and China, which ‘is a broad, it is a deep, it is an expanding and durable relationship.’ While the US wanted to support its companies in China, it was also keen to keep good diplomatic relations with the Chinese government. However, there is no doubt that the US government finds the censorship in China very problematic, which helps explains why in 2006 it put together a taskforce named ‘Global Internet Freedom,’ which is supposed to press for online freedom for technology companies operating in censoring countries.

Apparently Google went through very tense negotiations with the Chinese government after the attack, but without any result. Finally, Google announced that it could not have its server in China and at the same time promise to stop its censorship of search results. It therefore decided to move out of China and move its server to Hong Kong, where it would be safe from these regulations.
Protecting values or failing market adaptation

There are some people who view the story of hacking on Google servers as an excuse for Google to exit China because its market share was very poor there, seeing as the search engine had no problem agreeing to conditions of censorship in the first place. Google's revenue from China only amounts to one per cent of its total revenues, which is very little considering China's enormous population.27

The small market share and revenue is basically due to Google's original poor entrance strategy. While from the very beginning Google has been successful in creating technology that can organize information on the Internet, it has failed from the start to customize this technology to the specific market in China. According to a successful businessman in China, Google and many other international companies have not been able to deliver a product that the Chinese internet user really likes. They have put too little effort and time into understanding Chinese market conditions and local conditions within China. Further, Google put little effort into empowering its local operating teams. In general, though, foreign companies seldom take the lead in the Chinese web industry,28 and Google is therefore no exception.

As pointed out by Chris Evdemon in *Business Times Singapore*, ‘While China may seem like a market ripe for the taking by global Internet giants and other established players abroad, there are major differences that give Chinese domestic firms a “home-court advantage”. These include demographics, usage habits, government regulations and an ever-important distinct local mindset. Anyone who has recently surfed one of the popular Chinese websites would immediately notice the differences in user interface aesthetics and overall user experience. These pose a big hurdle for major Internet companies in building a presence in China, with most failing to make it ultimately.’29

Google has not been able to adjust its search engine to the Chinese market because it has not adapted to Chinese search patterns and norms. According to Kathrin Hille and Richard Waters the Chinese Internet contains a ‘vast, assertive and highly flexible censorship apparatus’ and ‘the formative forces of “.cn” of course also include cultural preferences and social structures that are very different from those of the West.’30 Google has simply not understood how the Chinese use search engines and it has therefore not been able to adapt its search engine to Chinese cultural preferences. In this way Google has totally overlooked the fact that its biggest competitor in China, Baidu, could offer its users a search engine that was designed to encompass the Chinese characters. It is
therefore a valid argument that its cultural research completely failed in China, and cost it a noticeable share there.\textsuperscript{31}

Thus while Google was a victim of censorship, this dissatisfaction may not be the real factor prompting its exit from China. It could even be interpreted as a welcome opportunity for Google to get out of a competitive game that it could not match.

Conclusion

It is clear that some experts view Google’s exit as a lost opportunity that it will not have again. This is especially true in China, where government influence is often detrimental in the extent of success that a foreign company will have in the country. As Google publicly criticized the government and finally pulled out of the market, it did not leave the relationship on good terms, burning its bridges with the government, with media, and perhaps with some of its employees.\textsuperscript{32}

According to Michael Witt, INSEAD affiliate professor of Asian business and comparative management, ‘There will be repercussions probably in their relationship with the government. If there were specific business areas, for instance, where they need permission, you would expect that perhaps they would find it a little bit harder – certainly a loss of face. At the same time, they probably have not exactly made friends with the Chinese government. So there may be subtle ways in which Google will in future somehow pay for this one; I would be very surprised if there were no price for this.’\textsuperscript{33}

In deciding whether to stay or leave China after the cyber attack, Google probably did not have much to negotiate with, as the Chinese government did not really need Google; it already had Baidu, the biggest and most successful search engine in China. Poor knowledge of the cultural specific search patterns of the Chinese public therefore cost Google any advantage in negotiating with the government. It seems it put little effort into understanding Chinese culture. Thus, regardless of whether Google had stuck up for its values in China or not, its success was very limited. Nevertheless, it will have gained a lot of credit for sticking up for its values in a Western context and that will surely bring it some success. If it had accepted the cyber attacks, it could have lost support on its own turf.

More generally, the case shows a huge Western multinational company overestimating its own strength as a player dealing with the world’s second-largest economy. This is, in particular, clear when Google escalated the conflict. It is of course possible for an independent government to implement any legal system. On the other hand, as described in this case, the values in the West are also fundamental, as exposed here
by Google. It seems that players tend to pursue their own values indiscriminately, because they, in particular the West, believe these values are accepted universally. We will as mentioned in the beginning see more of this kind of ‘clashes’ between the Eastern and Western political scenes in the coming years as China increasingly becomes strong and want to have control its own internal affairs, but the political systems are also evolving and will be changing one way or the other in the future.

**Case study: Rio Tinto and China**

Over the last 30 years China has developed from one of the poorer countries to the second-largest economy in the world. It is in the process of finding its role among the strong players. As China has witnessed a rapid economic development, the demand on raw materials for production and development has increased significantly over the past years. This demand has led to strong competition among steel companies. However, the prices of ore have not been predictable and steel companies have found these fluctuating prices problematic. Price irregularity has created an incentive for them to resort to shady methods to secure a continuous flow of iron ore at a stable price. The Rio Tinto case is about corruption within the steel industry as a result of increased competition and demand for iron ore in China. The case illustrates how iron ore has become an indispensible resource for China, and how the charges of corruption can on the one hand signal a new attitude towards corruption within China, or it could illustrate that the Chinese state has something at stake by letting the charges go.

With more than 800 companies, China has the largest steel industry in the world. Because there are so many steel companies, none have a market share – none hold more than five per cent – big enough that they can afford to negotiate with an iron ore supplier like Rio Tinto. According to the Chinese government it has therefore been impossible to negotiate pricing on iron ore, and as China is the country with the biggest spending on steel, it is naturally dissatisfied that prices cannot be negotiated. Prices have been benchmarked on annual negotiations between sellers and large buyers in the industry, but because of the extreme demand in China, these prices have been undercut. As a result of unpredictable prices, which could be extensive, especially given the long shipping time to China during which time the price can vary a lot, there has been a significant incentive for suppliers and buyers to negotiate a price beforehand. The buyer making sure that it can trust the actual price on ore and the supplier making sure that the buyer
will actually buy the ore.\textsuperscript{39} According to a Shanghai-based minerals dealer reported in the \textit{Wall Street Journal} ‘You are paying the buyer to buy the goods but the buyer is also going to take care of you as well.’\textsuperscript{40} Furthermore, the licensing of iron ore import has been restricted to big steel companies, which means that smaller companies have been forced to buy iron ore from bigger companies, which sell it on a spot market at double the price of what they had to pay themselves.\textsuperscript{41} Naturally, this creates a sense of injustice among the smaller steel companies, which might be tempted to find a cheaper, but illegal, solution to their supply problem. While the bigger companies buy at benchmarked prices, smaller companies have to buy their iron on the spot market.

\textbf{Rio Tinto and Chinalco}

In June 2009 the Australian/English iron ore company, Rio Tinto rejected an investment by the state-owned resource company Chinalco, because investors and the Australian government protested against the deal. Later that same month price negotiations broke down between the iron industry and Rio Tinto, because Rio Tinto did not want to reduce prices on ore. A few days later four employees from the company were detained on charges of espionage, stealing of commercial secrets, and corruption. The accusations of espionage were later on dropped by the Chinese state.\textsuperscript{42} According to the Chinese prosecutor, the employees had stolen commercial secrets that allowed them to negotiate an unfair price on iron ore during the annual negotiation with the Chinese steel mills.\textsuperscript{43} Furthermore, the Chinese state charged the Rio Tinto employees with accepting bribes offered by smaller companies in exchange for a benchmarked price on iron.

The charged employees, all ethnic Chinese, were Stern Hu, an Australian citizen, and Wang Yong, Ge Minqiang, and Liu Caikui\textsuperscript{44}, who all pleaded not guilty. Rio Tinto initially protected its employees, and stated that it had not found any evidence of foul play within the company.\textsuperscript{45} After the charges, Australia’s foreign minister downplayed the influence the case would have on Chinese-Australian relations, but argued that the charges on stealing commercial secrets would have a great influence on international businesses in China. He put this down to the fact that there was no clarity as to precisely what the charges referred to and, since they would be tried behind closed doors, this lack of transparency would remain.\textsuperscript{46} He urged that a quick solution be found to the situation.

In August 2009 the detained employees were arrested on the charges and later that month the Australian trade minister stated that the
Australian citizen, Stern Hu, would have to accept his sentence if found guilty, thus illustrating less sympathy with the charged employees than previously. In October the foreign minister likewise declared that business would proceed as usual in China. It was as though nothing in the charges could change the diplomatic relations between China and Australia at this point. In March 2010 the trial against the employees began and, to everyone’s surprise, they all pleaded guilty. This was one of the strangest developments in the case, as nothing indicated beforehand that they would do this although it is difficult to avoid being involved in bribe when working and negotiating in China. The four defendants are subsequently found guilty. Initially, Stern Hu was charged with receiving US $11.25 million in bribes and stealing commercial secrets, but was found guilty of accepting US $935,000 in bribes. The Rio employees were sentenced to between seven and 14 years, a verdict that shocked the business community and was considered very harsh.

**Analysis of the state’s motives**

Not many details of the case have been made open to the public, which has also led to a lot of speculation as to the real motive behind the charges and if they did hold water. Why would China suddenly make a big case out of corruption, when it had not previously been interested in pursuing corruption cases? There are some speculations that it was a welcome opportunity for the Chinese government to stop Rio Tinto’s enormous power in the iron ore business, where there is no room for bargaining among the iron ore buyers, a lot of whom are part of the state apparatus.

The detention was considered politically motivated by some, as Rio Tinto at the time was about to merge with the natural resource company BHP. Global iron ore trade is dominated by three giants, of which Rio Tinto and BHP are two. With the prospect of Rio Tinto becoming the biggest player in the iron ore market, some argue that the Chinese government had plenty of reason to pursue the corruption charges. The prospect of the merger meant that Rio Tinto might be in a position to gain a monopoly on iron ore, leaving the Chinese government with no influence on supply. This was naturally a harsh outlook as iron was and is a very important natural resource for China’s industry and growth. There has been one clear piece of evidence in the charges, which was a written statement from a private steel company owner, claiming that he paid off Mr Hu’s colleagues. Critics nevertheless claim that this was not enough to find the four defendants guilty of the charges.
Another speculation in support of a politically motivated persecution is that the state-owned company, Chinalco was due to take a US $19.5 billion stake in Rio Tinto before Rio Tinto opted out of the deal. This took place only a short while before the arrest of the Rio Tinto employees. During the affair, Rio Tinto had not signalled any wish to merge with BHP Billiton, on the other hand it had signed a deal allowing Chinalco to share in its production of iron ore in Africa. Rio and Chinalco have just confirmed plans for a partnership to develop iron ore deposits in Guinea. That is the sort of deal that seemed impossible last year when Rio shunned the state-owned aluminium producer’s promise of a capital injection in favour of a rights issue. Rarely can a guest speaker have uttered the cliché “Today, I want to look to the future” with more feeling than Rio’s boss Tom Albanese in his speech to the China Development Forum on 21 March 2010 (Hill & Simonian Rio, 2010).

Mr Albanese actually goes to the heart of the problem of trying to disentangle the various parts of the relationship between China and Rio, or between China and many of the western companies that work with, in and for the country. It can not be disentangled. At the same time as Rio can be at odds with its largest customer (China) over iron ore pricing, it can be forging an agreement with its largest shareholder (China) over iron ore deposits (Hill & Simonian Rio, 2010).

Furthermore, Rio Tinto signaled its commitment to China when the chief executive shook hands with Premier Wen Jiabao in Beijing, declaring a respect for the legal process and outcome.

There is probably good reason to believe that Rio Tinto and the few other giants in the iron ore industry are challenging the good will of the Chinese state, as the state for long has felt that it should be offered a special deal on iron ore, since it is the biggest iron ore consumer in the world. Nevertheless, there are no indications that corruption did not take place within Rio Tinto or that it was fabricated by the Chinese state, as it is well known that corruption is part of the industry, especially with the increased competition. It is interesting, though, to investigate why the state put so much effort into this particular corruption case and responded with, what experts term relatively harsh sentences.

The legal system

The charges against the Rio Tinto employees signalled to the world that China is taking corruption seriously. Moreover, if the charges are indeed a result of a new policy to fight corruption and not simply a pursuit of own interests in the iron ore industry, it indicates a new shift in the institutional environment in which businesses in China are
operating. According to experts, China has suffered from corruption for a long time. A former Rio Tinto executive states that businesses in China have ‘to take extra care in appointments – and you can’t put too much faith in one individual,’\(^{57}\) because corruption is part of the business environment there. Nevertheless, some argue that the real issue in the Rio Tinto case was not only a matter of corruption. First and foremost, it was a matter of breaking the trust between two parties. Accordingly, Hugo Restall from the *Wall Street Journal* states ‘Everyone doing business in China, should be clear by now on the rules – there is no rule of law. Deals can be done on the basis of mutual trust, which creates some level of certainty. The four Rio Tinto executives may be guilty of corruption, but the real reason they are in prison is because trust broke down.’\(^{58}\) Thus there are speculations that despite evidence to the contrary corruption is less important for the state apparatus in China. What is more important is that the partnership between two businesses is trustworthy and respectful. The partnership between Rio Tinto and the Chinese state-owned business Chinalco was far from holding any of these values, as a partnership had been broken.

The Rio Tinto case was not least discussed in terms of the legal system in China, which was criticized for being incomplete in respect to different procedures. David Barboza from the *International Herald Tribune* argued that it was okay to prosecute for a crime, but that it is a problem when the prosecution is discriminating.\(^{59}\) The prosecution may thus be seen as unusual in the Chinese context and therefore not credible. Furthermore, the charges focused attention on what many term a legal blur in China, which refers to the incomplete interpretation of laws such as stealing of commercial secrets and how this crime is actually defined. This uncertainty has made many businesses in China worry about their own proceedings and that they themselves may be entangled in the Chinese legal system.\(^{60}\) The uncertainty about the actual crime committed under the charge of stealing commercial secrets remains, as this part of the trial was tried behind closed doors.

Another issue that was disputed during the trial was that the actual due process was not fair, as the defendants’ lawyers had only limited access to their clients and any witnesses before the trial. Moreover, according to Sky Canaves, from 1998 to 2006 less than one per cent of defendants were found not guilty in the Chinese court system.\(^{61}\) It therefore seems that challenging the charges was an impossible job. He argues further that a defendant cannot always completely trust his or her lawyer, as governments, which are in charge of renewing licenses to practice law, may exert political pressure on them. Often lawyers
may actually encourage defendants to plead guilty, as this will secure a lighter sentence than a complete denial of any illegal activity.62

According to some sources, the charges against the Rio Tinto employees were not a result of either the annual negotiation between Rio Tinto or the fact that Chinalco at the time did not get its stake in Rio Tinto. Supposedly, investigations had already started before these events. These critics argue that the charges were rather a result of a break of trust between the Chinese steel industry and Rio Tinto. The trust, according to these sources, broke down when the company backed out of long-term contracts in order to increase its profits in other places and when it doubled iron ore prices during the 2008 negotiation.63 This may have infuriated some in the steel industry and thus caused them to inform against Rio Tinto.

According to a Beijing-based lawyer, it is difficult for a company to support defendants once they have pleaded guilty because it risks losing contracts with the government and might get charged itself. Thus the best thing a company can do in order to support its future business is actually to support the ruling and respect the court’s decision.64 This is probably the reason why Rio Tinto did not fight the charges against its employees.

It is furthermore difficult to defend a plea of innocence and therefore strategically wiser to plead guilty to some of the charge, and thereby hope for a milder punishment.65

Institutional issues

There are clearly some lessons to learn about the institutional and legal environment in China through the Rio Tinto case. First of all, one may put an emphasis on the importance of establishing a good relation with both local and central government institutions in China. Even though there is no defining evidence that the corruption charges were pursued because of Rio Tinto’s power as an iron ore company in a country in great need of its supply, it is clear that the government signalled its power by the charges. It can further be concluded that the Rio Tinto management and the political leadership in Australia took the charges very seriously and put an emphasis on maintaining a good relationship with the Chinese state.

As mentioned by critics of the legal procedures in China, the process of the legal trial and the fact that charges of stealing commercial secrets were not specified may also have scared several international companies in China, in which case the Rio Tinto trial served as a display of power for the legal system and the government in China. The uncertainty
about what exactly the stealing of commercial secrets means makes the legal system in China very difficult for foreign businesses to navigate. This may in turn discourage companies from doing business in China. This may also explain the reason that these charges were given up by the Chinese court.

One might ask whether Rio Tinto had any option besides accepting the charges of the Chinese state and withdrawing its support for the employees. Rio Tinto is one of the few companies that have so much power that it might threaten Chinese production. On the other hand, Rio Tinto cannot live without China, and the Chinese state has great influence on several businesses in the iron industry, and may therefore pose a threat to Rio Tinto. Furthermore, the employees did plead guilty.

The harsh sentencing of the employees came as a surprise to the business community. Firstly, because the sentences were long and secondly because Rio Tinto offered, after its initial withdrawal from doing business with Chinalco, the Chinese state-owned company a 47 per cent stake in a venture in Guinea and the offer was accepted by Chinalco (see above). According to Philip Bowring, many in the business community therefore saw the Rio Tinto case ‘as evidence of a shift both in China’s attitude to big foreign businesses and in the balance of commercial power in the mining business.’

Conclusion
The whole story is about all the issues discussed in this case. It is about the new and stronger position of China and Chinese companies and different legal positions in China and the West. Other obvious issues are power and trust, relationships and face, in addition to the position of companies in China and the world. Finally, the role of overseas Chinese in foreign business in China is also at stake. Ultimately what we are seeing is a Confucian state being modernized by its interaction with global market forces, and the limits to globalization in the shorter run.

Case study: China and the WTO
The WTO is the global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. Their goal is to help producers of goods and services, exporters, and importers conduct their business. Today WTO has more than 150 member countries.
It took China 15 long years to become a member of WTO. The negotiations started in 1986 and ended in 2001. China started its negotiations to become a member of GATT, the ancestor of the World Trade Agreement, in 1986. A working party was established to review China's bids for membership in the WTO and over a six-year period China sent ten delegations to meetings in Geneva on the GATT–China working party. Being a planned economy at the onset, as opposed to a market economy, Chinese foreign trade was continuously assessed by GATT.67

China's supposed commitment to a planned economy meant that it was not easy for it to enter the WTO. Domestic and foreign affairs created obstacles along the way, as well as internal and external rules and regulation. One of the main objections from the international community was that China was blocking access to foreign companies through various internal regulations. Further, there was no tolerance towards the stealing of foreign intellectual property that facilitated a great copy industry in China and went against international law.68 These hindrances, among others, meant that the negotiation process was hard and long.

In 1999, China had concluded its talks with 12 WTO members69 but the process was not finished. Internal bureaucracy in the Chinese political system meant that different interests obstructed progress for WTO negotiations. Opposition towards WTO was found both in the public and the different state agencies. This opposition impeded collaboration between ministries and no progress was made in negotiations with the US. Furthermore, there were several foreign relational problems with the US at the time, which also impeded Chinese WTO membership. China's access depended on the support of the US, and it was therefore crucial that relations between the two countries were improved.

There were both pros and cons to entering the WTO, and it was up to China to estimate which outweighed the other. Further, it was up to China and the US to negotiate a deal that both could live with. On the one hand, China would have to open its economy to foreign trade, and business and on the other hand the US would have to open its barriers to Chinese trade. The opposition to China's membership outside China in particular in the United States was considerable.

The negotiation process

One may wonder why it would take 15 years for China to enter into a WTO partnership. There are different reasons that could serve as explanation. First of all the internal bureaucracy and opposition in China meant that the process was delayed.
Bureaucracy and internal conflicts of interest in China

Traditionally the administration of Chinese economy has been divided between many different agencies in the central government. The many internal financial agencies thus share overlapping responsibilities and constitute many different interests in terms of China’s finances, which complicated China’s position in the WTO and delayed its access. The very bureaucracy inherent in administrative systems, compiled of rules and laws in terms of trade, meant that the liberalization required by the WTO would, by its very nature, be devastating to such agencies and their power.\(^70\) In light of these systemic structures some financial agencies tried to counter any attempts to reach membership of the WTO, because they wanted to protect Chinese industries and were afraid that liberalization would go against Chinese interests. Overlapping responsibilities among the many different agencies, commissions, and ministries made decision making difficult, especially since some focused on WTO membership and others did not want the membership. For instance, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) had a clear focus on reaching economic liberalization within WTO, but could not promote its goals as the decision-making process was focused on coordination with many different administrative bodies with interrelated responsibilities.\(^71\) This decision-making process made WTO negotiations a slow and difficult process. While MOFTEC kept up with the economy and world trade on an international basis and saw the best solution to China’s future in an early commitment to the WTO, the other agencies mainly saw problems of WTO accession in terms of import competition and unemployment in China.\(^72\)

MOFTEC argued for this commitment for several reasons. First, it viewed accession as a signal of political commitment to play by the trade rules in a world where China’s rising power was creating increasing international unrest. Second, if China was not part of the WTO it would not be part of the mainstream world economy, as the WTO would only expand and be increasingly influential in the future. Third, China’s protectionism would only create a backlash, as it would not be able to keep up with innovation and globalization without competition from global trade. Fourth, MOFTEC’s position was that it was only truly through the body of WTO that China could change the unfair trade barriers that had been imposed on some of its industries.\(^73\)

Different Chinese institutions had been responsible for the talks from 1986 until 1999, but none had really been successful because of the internal bureaucracy and lack of power of the individual institutions. Furthermore, many industries, ministers, and people in the
public supported a delay in WTO negotiations because of the fear that increased competition would hurt Chinese industries. Thus the collaboration between ministries became difficult and progress was delayed. These institutional hindrances were therefore partly to blame for the delay in negotiations. However, the long negotiations were also dependent upon the Chinese–US relationship, and thus a matter of foreign policy. Despite the obvious fact that China should be member of a free trade organization comprising more than 150 countries, the US opposition was considerable though the years.

**Foreign policy influence on WTO membership**

In 1989 China had almost accomplished a basic accession agreement to GATT, the agreement was by no means ideal for the US and other countries engaged in trade with China, as it would provide less stringent obligations because of its relative undeveloped status at the time. Nevertheless, this agreement came to a halt because of the massacre at Tiananmen Square in 1989. This created international opposition and the US imposed economic sanctions on weapons and technological merchandise. Further, the military relationship between China and the US was temporarily dissolved. Nevertheless, the US had no interest in increasing the conflict with China, as this would not solve future trade obstacles. In 1991 negotiations therefore started again.

Problems were far from resolved, though. It was very difficult to make progress in China’s accession to the WTO. A genuine obstacle lay in the power that trade ministries and state trading companies possessed in China. They were against making any concessions to enter WTO, which was obviously not a constructive outset for negotiations. The main objection from this opposition stemmed from a belief that concessions were political and not commercial; thus becoming a negotiation about political power.

Because no progress was made, the US threatened to put sanctions on Chinese goods if US goods were not respected in terms of intellectual property rights. This was a very serious threat to China, as one third of its exports at the time went to the US. Faced by this risk negotiators knew that it was important to reach an agreement but they could do little with the opposition created by ministries and state trading companies. It was therefore down to the political power and determination of Premier Li Peng that negotiators could work towards an agreement. This finally resulted in an agreement in 1992 for market access and protection of intellectual property rights. China had to follow a deadline to make national laws compatible with these agreements.
After 1994 there was a general consensus in the public and among different industries that China’s membership of the WTO should be postponed. The leadership did not want to go against this consensus. Furthermore, the Asian financial crisis in 1997 also created uncertainty about the rationale of entering the WTO because of the risks of exposure for the Chinese economy. The US was not satisfied with China’s efforts to enforce the 1992 agreement that would lead to WTO membership. It hired Charlene Barshefsky to handle negotiations with China. Barshefsky was a tough negotiator, who had a clear determination towards Chinese WTO membership. Chinese companies were increasingly producing illegal products that entered the world market. In 1995 Barshefsky threatened to enact Section 301 of the WTO’s laws, which would fine China with US $1 billion if it did not follow regulations put forward in the 1992 agreement. This threat elicited a counter threat by the Chinese, who said they would impose sanctions on the US. After extensive pressure, China agreed to an action plan centered on specific rules of intellectual property and dates of implementation.

Still, however, China failed to meet the terms of the plan. In 1996 Barshefsky tried other means of persuasion; she tracked down specific industries that did not comply with the rules and regulations set forward in the action plan and demanded that authorities close these outlets. The Chinese authorities argued that it was very difficult for them to control what was happening in the provinces. As this was no excuse for Barshefsky, she went to the provinces where many illegal CD factories were operating and threatened officials there with sanctions on the textile industry if the factories were not closed. The textile industry was the most important export for China, so Barshefsky was proposing to hit Chinese exports where they would really hurt. After this, President Jiang Zemin invited Barshefsky to a meeting concerning the factories but she refused to meet. This was unheard of and shocking for Jiang, as custom was that foreigners should feel obliged and privileged to meet with high-level politicians. The move put pressure on Chinese negotiators. Barshefsky argued that she declined because Jiang would run the risk of losing face if they met and she afterwards placed sanctions on the textile industry. Not long after her refusal to meet, the CD factories were closed. Her hard tactics seemed to be working so far.

However, in the long run, it would be difficult to ensure WTO membership for China if it had to be threatened with sanctions all the time. As there was a genuine disbelief in China that WTO membership was actually for the good of the country’s future trade, Barshefsky would have to apply another tactic.
Instead of threatening, she tried to convince China, that membership was a win-win situation. If the country did not protect intellectual property rights, its own industry would be hampered in its development of entertainment and technology in the long run. In this line of argument, Chinese negotiators increasingly were convinced that WTO access would all in all facilitate development within China and provide better access to foreign markets. Barshefsky created a roadmap indicating how China could meet WTO standards. She argued that this would help China compete globally. China's chief trade negotiator, Long Yongtu, was very supportive of her idea.

In 1996 Jiang and President Clinton decided to speed up negotiations because the political and economic reality had changed in China, and it became clear that a WTO commitment would push along necessary market reforms. This realization was probably provoked by long and tough persuasion and negotiation with Barshefsky. The government restructured in 1998 and the top leadership decided that it was time to speed up the negotiation process so it could gain access to the WTO. It began a reform process realizing the bureaucratic obstacles to obtaining membership. In order to obtain a membership of the WTO China was dependant on its negotiations with the US. While China needed the support of the US to enter WTO, the two nations' foreign relations were experiencing several difficulties. In March 1999 the Chinese were accused of nuclear espionage. The Republicans also accused China of illegally contributing to the Clinton re-election campaign. In March 1999 an American nuclear scientist was accused of stealing nuclear secrets from the US. Clinton was criticized for not handling the espionage case and by using China as an enemy the Republicans gained political support.

Even though the tone between the two countries was not good, the leadership in China decided that Premier Zhu Rongji should not cancel a scheduled visit to the US. He took with him a deal negotiated with Barshefsky that set out to remove several trade barriers on US imports and offered to open China's markets for banking, insurance, and telecommunications – industries very important to the US. When Zhu went to Washington he believed that he would seal a deal with Clinton, not least because of the many favorable concessions that China had made in the deal. Nevertheless, the political climate in the Senate complicated matters. James McGregor describes it in this way.

It had been only two months since the US Senate had rejected the embarrassing House-approved articles of impeachment against the president. A congressional committee had just completed its severely flawed
but politically charged report declaring that China was systematically stealing American nuclear and military technology. Indictments were being prepared against Chinese–American hustlers who raised money for the Clinton campaign from donors alleged to be connected to the Chinese government.\textsuperscript{90}

Clinton had thus been advised not to seal a deal with the Chinese just now; he explained to Zhu that while they could make a deal, there was little chance that it would survive in the Republican congress.\textsuperscript{91} Clinton rejected the Chinese offer because of the majority Republican opposition in the senate. He argued that China should further open up its financial, insurance, and telecommunications markets and keep its quotas on textiles and steel to the US.\textsuperscript{92}

When Zhu returned to China he was unpopular among the leaders of the National People’s Congress and among the different ministries in government. The party group questioned why Zhu would admit so many unrealistic concessions to the US in order to join WTO. The opposition from the different ministries was rooted in the threat they saw in the competition that WTO membership would bring.\textsuperscript{93} Zhu’s concessions in the US and the fact that he took charge of decisions were in great contrast to the previous slow decision process, reflected in the power of the Chinese institutional bureaucracy. At the end of the 1990s a fast accession to the WTO thus becomes a clear strategy towards domestic reforms. By adding the external pressure of WTO the Chinese government would be able to accelerate reforms in the institutional environment in China.\textsuperscript{94} Jiang openly defended Zhu’s negotiations with the US, and states that he has acted according to Politburo decisions. It was thereby clear that Zhu’s negotiations were supported by the leadership in China and were a clear strategy towards accelerating negotiations.\textsuperscript{95}

It is, however, not only Zhu who faced criticism from the White House meeting; the American business community was also baffled by Clinton’s rejection of the Chinese deal. How could he say no to the concessions made by China? After wide criticism, Clinton realized that he had made a mistake. He tried to convince Zhu to make a deal before he went back to China, but Zhu rejected it.\textsuperscript{96} The ball was now in China’s court.

As if the US and Chinese relationship was not bad enough, tension escalated when the Chinese embassy in Belgrade in Yugoslavia was bombed on 8 May 1999. While the US claimed it mistook the embassy for a local government building, the Chinese saw it as an attack on the Chinese support for Yugoslavia. Because of the bombing the WTO talks
were delayed for several months. The rage over the bombing is taken to the streets of Beijing and Shanghai in the form of mass demonstrations. After this, Jiang refused to talk to Clinton.

Criticism of Zhu’s previous concessions to the US increased among the different ministries and within the Chinese Communist Party because WTO admission was seen as a clear step away from socialism towards capitalism. Li Peng, head of the legislature, and Jiang were restrained on the subject of the WTO accession and publicly announced that there was no deadline for accession and that China did not have to make concessions to join the WTO. Further, the government demanded an explanation for the bombing of its embassy. However, even though China had marked its territory, it was still committed to enter the WTO.97

After some time the US agreed to financial compensation. In order to gain support for WTO entrance, Zhu had to rally support through the channels that he knew were tired of the bureaucracy standing in the way of economic initiatives. These were local officials and businesses. He therefore had a former trade minister lobby around the country explaining that a WTO engagement was a win-win situation.98 The tension between the US and China cooled off and the parties decided to resume WTO talks. Talks resumed but they were not easy. One area of dispute was the status that China would enter the WTO with. China, wanted to be treated as a developing country, while the US wanted China to enter as a middle-level development country99 In November 1999 Barshefsky was back at the negotiation table and after some initial talks with Zhu she ended up negotiating with the trade minister, Shi Guangsheng, who knew little about the details of the deal. For the main part he actually reported back about the general feel and atmosphere and not the progress of the deal at the table to the leadership. On 16 November Barshefsky said that she would fly back to the US as she was wasting her time with the trade minister. Long Yongtu, the chief trade negotiator, was worried, especially because he knew that China was very close to securing a great deal. He called up Zhu, explaining the situation and his worries that the trade minister had not reported back the details of the agreement. Further, he felt that China had to strike a deal now, as an upcoming US election could restrict access much longer. Zhu said that they had to call up Barshefsky and say that they wanted to make a deal, and that he himself would become involved. It was a hectic last few hours and a deal was finally struck.100 China would allow only 49 against 50 per cent of insurance companies to be foreign owned, and 50 per cent against 51 of telecom value-added services to be owned
by foreign companies. Zhu on the other hand promised to implement changes that would facilitate the foreign business environment faster than previously.\textsuperscript{101} In this way the parties managed to sign a deal and China officially became part of the WTO.

**The Chinese decision-making process**

Jiang’s defense of Zhu demonstrates the shift from a previously held consensus-making process in the Central Committee of the Chinese Communist Party to a top down decision-making process enacted by the Standing Committee of the Politburo. All of a sudden the negotiation process for entrance to the WTO accelerated after a long period of internal institutional disputes. It is also believed that Zhu executed foreign policies during his negotiations in the US after consulting the Politburo and Jiang. The word is that he gave instructions to ‘hold an active attitude, use flexible methods, excel at negotiations and reserve no naiveté.’ This instruction was given after the tension created by the bombing incident. After discussing the pros and cons of entering the WTO, the Chinese government decided to resume negotiations in haste.\textsuperscript{102}

During the talks the leaders censured any opposition by ordering objective reports of the talks and not allowing any attention grabbing or emotional displays. This silenced any potential rumors of opposition from within the bureaucracy, thus preventing any disturbances to the negotiation process.\textsuperscript{103}

**Concluding remarks**

What is very peculiar and remarkable about the Chinese negotiation process in the WTO is that while the process was slow, it picked up speed and disregarded the slow process of the institutional environment in China at the very last minute. It was therefore not until 1999, as China experienced several foreign policy problems with the US, that entrance to the WTO really became realistic. The bureaucracy was excluded from the decision-making process surrounding the negotiations. The opposition that Zhu experienced after his return from the US, where he had made several concessions without consulting the ministries that would be affected, was probably based on this exclusion. The many ministries that argued that they would suffer from the increased competition were ignored in the decisions affecting them. There are many indications suggesting that China’s WTO membership would not have happened, had it not been for the government’s top-down management of the negotiation in the end.\textsuperscript{104} But this top-down
management was also pushed forward by the long and firm negotiation by Barshefsky, who went to great lengths in confronting the leadership with the changes that would have to be made, especially in terms of intellectual property rights.

Because of the highly secretive environment surrounding the WTO agreement, it was difficult to measure public opinion about the deal. Some surveys indicated that people were happy about the foreign goods that would start to enter the Chinese market. Others indicated that people were afraid that they would lose their jobs because of increased competition on the Chinese market. Hongyi Harry Lai argues that a very critical consequence of the secrecy and the distance to the bureaucracy was that when China entered the WTO, many did not understand its implications and the consequences on rules and regulations. The state council thus had to urge party committees to educate themselves on the new rules. It is difficult to implement the rules and regulations in China, when considering that ‘Chinese officials themselves identified more than 170 national laws and regulations and more than 2500 ministry regulations as being WTO related.’

Chinese membership thus had some very profound consequences on the rules and regulations in China. However, as mentioned previously, this WTO membership was also a part of the government’s strategy to obtain domestic reform and fully join the world community.
Negotiating Skills in India and China

It is often said that negotiation is more of an art than a science. And nowhere is this more true than in the cases of India and China. As we have outlined in the earlier chapters the institutional environments of India and China are not only distinct from those that prevail in Western societies, but in addition, they are also distinct from each other. This requires that foreign investors seeking to do business in these countries make the necessary adaptation. Such adaptation may not always be easy, either for individuals or organizations, but it is essential if the firms wish to be recognized as good corporate citizens, which is an essential prerequisite for obtaining the necessary legitimacy. The starting point of our discussion here is the recognition that the relevant negotiating skills must be tailored to the requirements of attaining and maintaining legitimacy, a point that we have articulated many times over in the book. We begin by first discussing the nature of negotiating skills that might be most relevant for India and follow it up by a discussion of the skills most critical in the Chinese context.

Negotiating skills in India

(a) Become comfortable with ambiguity

Ambiguity means that a given situation may admit of more than one meaning or interpretation. Ambiguity pervades the Indian institutional environment and it is imperative that the negotiator/s learn to become comfortable with it. As we have pointed out, the Indian regulatory environment often admits of numerous delays and a lack of clarity and this no doubt may cause discomfort to the Western negotiator. The travails of the now defunct Enron and Union Carbide illustrate this only too well. Not all negotiations may be as harrowing, complex, or time
consuming as the cases of Enron or Union Carbide, but nevertheless, ambiguity will remain a component of many of these negotiations and it is important that negotiators learn to effectively cope with it. Coping effectively with ambiguity requires negotiators to do a number of different things. First, and this is most important, they should not rush to judgment, be it positive or negative. They should let the situation unfold and try to get the maximum amount of information realistically possible before deciding on a particular course of action. It would be particularly helpful to rely on local contacts or networks to help them make sense of the unfolding situation. It is also worth bearing in mind that often enough their counterparts (Indian negotiators) may be coping with a similar or similar kinds of problems, and thus it may not necessarily be the case that they are using ambiguity as a strategic negotiation tool. Secondly, in a situation of ambiguity and where there appears to be no or less evidence of ambiguity dissipating, it might be useful to resort to a strategy of incrementalism, that is, a strategy where the negotiator undertakes or initiates small steps to test the waters. This strategy might provide more information at a minimal risk. Thirdly, by accepting and becoming comfortable with ambiguity the negotiators lessen the pressure on themselves to undertake any precipitate action.

(b) Be patient

Patience is an indispensable virtue in the Indian institutional environment. Bureaucratic constraints and delays, the tendency of Indians to behave either in an individualistic or a collectivistic manner, and the desire of Indians to renegotiate constantly the terms of the contract will no doubt test the patience of the Western negotiator. However, a loss of patience could be detrimental to the negotiation process and may lead the Western negotiator to terminate negotiations prematurely. It could also lead him or her to become overly aggressive. Overt displays of negative emotions, such as anger, may exacerbate the difficulties of building a relationship with the Indian counterpart. No doubt, relationships are less important in India, compared to China but they still play a role. A lack of patience may inexorably lead to a negative outcome, so even in purely instrumental terms it is never a positive. Finally, patience allows you to develop or exert greater control over the operating environment. The initiative for any action now passes to the other side, which cannot now expect that, stymied by a lack of progress, you are going to make any notable concessions. The onus is therefore now on them to take the appropriate strategic action. Patience, in this sense, enhances your bargaining power and therefore the ability to obtain a more desirable outcome.
(c) Do not be overly aggressive
Indians are naturally aggressive and it may be tempting to adopt a similar strategic posture in interactions with them. This is not advisable for a number of different reasons. Indians are rather sensitive to fears of being exploited by outside forces and an aggressive or a too aggressive stance may be interpreted as the behavior of an exploitative foreigner. Enron was overly ambitious and aggressive in selling its power project in India, and while that might not have been the most immediate cause of its failure there, the strategy that it adopted did it no favors. Aggression may also convey to the Indians that you are very eager for the project and if so, then do you have a hidden agenda? Aggression can thus further strengthen the perception that you might be gaining more out of the project relative to the Indians. A low-profile strategy, by contrast, will allay Indian suspicions to a degree and also provide you with much greater room for maneuver.

(d) Become comfortable with Indian idealism
We have made the observation that Indians tend to be rather idealistic in their thinking. They are looking for the most desirable solution and will spend a lot of effort and time to attain this. There will be a lot of information that will be exchanged and Indians will critically analyze and perhaps over analyze all of the information that has been presented to them. This is a rather time-consuming process and may make you impatient and or prompt you to wonder if the negotiations are going anywhere. It is useful to be cognizant of the fact that this is the way that Indians approach many things and while, no doubt, a certain suspicion of a foreign investor's intentions is no doubt implicit in this approach, it is above all their cultural proclivity which they are seeking to enact. If you become comfortable with this approach to things you will realize, that, frustrating as it may be, it might also offer some advantages, in that you will not enter into any deal or a project in a casual or backhanded way. There will have to be a justification for all of the steps involved in the process.

(e) Negotiate with a long-term perspective in mind
Negotiating in India requires an orientation towards the longer term. This is especially the case if you enter into politically salient high-visibility projects and/or projects that may have the potential to capture a large share of the Indian market. In all of these projects it is imperative that you demonstrate commitment over the longer term. It also suggests that in negotiating many of these contracts it might be wiser not to accept a high payout at the front end, but rather defer potential benefits for the longer term. This will earn you the trust, the respect, and
the commitment of your local partners and the relevant stakeholders. Legitimacy is more important than short-term profitability for the success of the project over the longer term. Indeed, it could be argued that this was one of the strategic errors that Enron committed. Although it may have professed a long-term view, the contract that it negotiated, and the mechanisms of such negotiation suggests an enduring short-term view of the proposed project. The long-term perspective is relevant to Indians for a number of different reasons. First, it may help to allay concerns that the foreigner wants to make a quick buck and exit the country. Secondly, it may assuage concerns that the costs and benefits of the project are likely to be more equitably shared than might have been the case otherwise. Issues of equitable distribution of benefits are no doubt important everywhere but their salience may be enhanced in a country where poverty syndrome is ever so dominant.

(f) Be mindful of Indian negotiating stratagems

Indians have survived and prospered in an environment where scarcity has been the dominant norm. India is now a much richer country than it was at the onset of independence, and with growth rates of eight to nine per cent per annum, India’s economic prospects look very good. There is, however, often a lag between shifting external conditions and a mindset that may have originated in an entirely different set of circumstances. Indians, as many observers have noted, are acutely price conscious and love to haggle. This is evident not just in shops but also in commercially negotiated transactions. The Western negotiator can expect to be confronted with such strategies and it is important that he or she be prepared psychologically to cope with such tactics. If unprepared, the Western negotiator could become flustered, angry, or may concede too easily, and this is surely not beneficial. Haggling invites a response in kind and if the other party is slowing down the negotiation it may just be beneficial to slow it down even further. Negotiators must also be cognizant of the fact that for Indians a contract is only the starting point of negotiations and not the end of them. This means that Indians may often seek to change the terms or conditions once the project becomes operational. The Western negotiator must once again demonstrate the appropriate negotiation ‘savoir faire’ to cope with these contingencies.

Negotiating skills in China

As mentioned earlier we see India culturally as somewhere between China and the West. The logical implication is that the negotiating skills relevant to India will also be relevant to some extent to China.
All the above points hold true for China, except for the description of idealism, as the Chinese tend to be pragmatic.\textsuperscript{1}

**Holistic approach**

The Chinese are most comfortable in the softer middle of a holistic system, meaning they prefer to create win-win negotiations because they live in a low trust society.\textsuperscript{2} If trust is an empty word, as a Chinese colleague said to one of the authors, then the obvious way to build it is through creating win-win situations, or in interpersonal relations sometimes even being willing to sacrifice one's own interests to keep the atmosphere. The best for the Chinese, as for everybody, is if there is something in it for both parties, but if that is not possible the Chinese can jump out the holistic frame and into the stratagems, where there are no ethical limitations to their behavior and they can do what they want, although they of course may choose not to explode the negotiations.\textsuperscript{3}

**Relationship building**

Relations are extremely important in China, because the Chinese live in their relations and use them to get things done in China and elsewhere. Networks are build up in a hierarchial system where it is important to create hamonious relations because the Chinese society is a low trust society. Networks, which to some extend is universel in all societies, are build up to relegate the relationship between people who have common acquaintances. This system of concentric circles created by the individual in the Chinese society is represented by ripples flowing out from the splash of a rock thrown into the water. Fei Xiaotong, who created the metaphor, described Western societies as represented by straws collected to form a haystack.\textsuperscript{4} Despite the limitations of these metaphors, the difference in approaches to negotiations are evident. The Chinese work and negotiate in dynamic networks. During negotiations the Chinese will also consider their networks, either in relation to keeping the network or how to expand it. The constant focus on networks means that the Chinese will have a broader perspective on the negotiation as long as they see the counterpart as being cooperative. This should not mean that the Chinese cannot focus on winning. If they feel that the counterpart is not interested in building relationships then they will only consider their own ‘ripples’ as happened in the Google and Rio Tinto cases.

**Become comfortable with Chinese pragmatism**

In general the Chinese go for win-win situations as we saw in the WTO case, but if they feel pressed they will stick to the principles. The Chinese
are, as mentioned, holistic in their approach to negotiations. They prefer to see the issues up for negotiation as connected. The holistic approach is surprising for Western business negotiators because Westerners have a more analytic approach. The holistic approach means that the Chinese do not see the issues that are up for negotiation as separate. If something changes about a certain issue then it will impact the other issues, therefore it is legitimate to bring issues that are already settled up for discussion again. Western negotiators often feel that the whole process is being restarted, which is not the case, although changes will be made. The Chinese side is only interested in changing those parts that have been influenced by the changes.

The Chinese tend to be more pragmatic than both Indians and Westerners in the sense that overall principles are not so important. We saw this in the WTO case and maybe also in the Rio Tinto case, where the cultural rule that foreigners should not be arrested was not adhered to. It is important to stress that the four people charged were all ethnic Chinese, of which one did not have Chinese citizenship and the other three were apparently Chinese citizens. Chinese citizens that help a foreign company are considered rather low down in the hierarchy in China because an ethnic Chinese should help the Chinese side, if there are big problems.

Focus

As an implication of the propensity to be pragmatic, the Chinese are extremely focused on the outcome during the negotiation process. When one of the authors stayed in China during the research period he met a young female student, who did her homework in a bus because she wanted to learn to concentrate. The extreme ability to focus is rather unique for China, where most people live a collective life in the sense that several, typically three or four people, live together in a room until they get married. Of course with China's rapid development this is undergoing changes.

Communication

Communication in China is high context, which is also known in Southern Europe, but there without the strong focus on results. The Chinese will tend to try to keep harmonic communications, even if they do not agree to something. Because of this tradition of harmonistic communication, it can be difficult for Western businesspeople to disentangle a communication situation in order to get the message. Most Chinese will not say upfront that they do not agree, and because they
do not communicate that way then the Westerners will often think that
the Chinese agree or at least can be persuaded to. The Chinese are, in
particular, careful about communication in in-group, but even in set-
tings where there are no network relations they would typically be more
constrained about adopting a very open communication style, because
this kind of communication almost does not exist in China.

**Adjust to Chinese time preferences**

Time among the Chinese is perceived polychromic, meaning that the
Chinese are comfortable engaging in several activates at the same time –
again, somewhat similar to Southern Europe. The implication for most
Western businesspeople is that is it difficult to evaluate the dynamic of
time among the Chinese. In general Western people feel that the Chinese
are easy to approach because they tend to accommodate Westerners’
wishes, but often at the same time as they have other commitments.
The Chinese tend to be slow in the relationship-building phase because
they spend time trying to enroll the foreign party into networks similar
to Chinese ones. After they realize where the foreign party is they can be
extremely quick in their hierarchical decision making.5

**Familiarize yourself with the bureaucracy**

The Chinese bureaucracy is difficult for Western people to understand.
The bureaucracy is a result of 2000 years of bureaucratic development
in China, and it is often mentioned that it is due to its refined bureau-
cracy that China still exists. The strong bureaucracy is Kafkaesque in its
impenetrable and complex way of functioning, which is frustrating for
Western negotiators who typically give up understanding it, whereas
overseas Chinese staff know the complexity but do normally not have
the personal connections to work effectively in it.

**Be aware of the inferiority feelings of the Chinese**

The hegemonic discourse that has existed since the Opium War has had
its impact on the Chinese. After the Opium War they suddenly realized
that they were not superior any longer. In many ways the Chinese ended
up with an inferiority complex, where they felt that they were inferior
to Western people in general. Western people were happy to support
this with various portrayals of the Chinese as inferior and a people who
should be developed and learn from the West. Today we see the flipside
of this, namely that the Chinese feel they are better than Westerners,
which of course is correct in some ways, but these comprehensive com-
parisons might be wrong. The implication for Western businesses is that
they have to be prepared to meet younger Chinese business people who will express the attitude that the Chinese are better and that everything is better in China. These people do not want to listen to criticism, even criticism that is not expressed openly. Any hints about something negative should be avoided. The Chinese will realize that China has weak points, but see them as temporary or created by Western imperialism. The new nationalism in China is well known from Chinese websites, but apparently not well known in the West.

**The role of the overseas Chinese**

Overseas Chinese play a crucial role in China’s interaction between the West and China, as already mentioned in previous chapters. Will they also play a crucial role in complex negotiations? Certainly it is the overseas Chinese who are in the forefront at the negotiation table, together with Western representatives. They play a key role as they need to have good relations with both their colleagues in the Western negotiation team and with their Chinese counterparts. The overseas Chinese are at the same time somewhat different from both groups. Their socialization is similar to their Chinese counterpart, but their current way of living is similar to that of the Western representatives.

**The role of trust**

Because of the language barriers the role non-linguistic means becomes relatively more important in trust-building when negotiating with the Chinese. The best mean is gift giving as described in chap. 6. By being willing to use efforts considering and preparing appropriate gifts before going to China the foreign negotiating team shows that it is serious about their China negotiation. Another mean that one of the authors found successful is to prepare a few western songs. All Chinese can sing and will likewise sing during the banquets. These means are important for bridge building means between the two negotiating teams, but this being said they cannot substitute language proficiency. Western negotiation teams should learn at least a little Chinese language, and they can be sure that at the Chinese side they team members will be able to understand some English.
Negotiation is an important managerial skill as it determines the ability of the managers to create value in a transaction. We cannot not negotiate; however, we do have the choice of negotiating effectively or ineffectively. In this volume we have highlighted some of the key aspects of negotiating in India and China. Many multinationals, and smaller and medium-sized enterprises are already present in these countries, are seeking to enhance their commitment, or are seeking to enter the market for the first time. These firms must learn to navigate effectively the local bureaucracy, the cultural norms, and/or the widely held assumptions and beliefs about foreign investors and foreign investment. We have therefore highlighted the salient aspects of these dimensions in India and China, demonstrating how each of these dimensions impact on the negotiating process. Thus, for example, Indians’ idealistic mode of thinking may lead them to have exaggerated expectations about the negotiation, thus either slowing the negotiation process down, or throwing it entirely in jeopardy. In a similar vein we note that contending is often the negotiating strategy used in India, as opposed to compromise in China.

The different negotiation strategies that are dominant in these different cultures are a product of their own institutional environments. India has been profoundly influenced by Hinduism, a colonial legacy, and a developmental strategy (prior to the liberalization of 1991) that was rather self-contained and antagonistic to foreign investment. China, by contrast, is a Confucian culture, that is seeking to overthrow the legacy of the Maoist era, and coming to terms with a colonial past that, while not as invasive as the Indian experience, nevertheless did have an impact in terms of shaping attitudes and thinking. No doubt, as these countries become more integrated in the global economy,
the institutional environment may shift even more, but whatever the degree of the shift it is fair to say that the imprinting of history will no doubt be there.

It has been our intention in this volume to acquaint readers with the historical past and the contemporary present in these societies so that they can get a better sense of both historical and current influences on their negotiation strategies. The illustrative case examples should help readers to get a better sense of how the various institutional influences play themselves out in concrete negotiation situations. India and China are both ancient civilizations and any foreign investor seeking to do business in these countries must be cognizant of the historical past, which conditions the contemporary present. We have also highlighted the key negotiating skills that might be relevant for managers seeking to negotiate contracts in these countries.

It is our hope that this book will provide practitioners and academics with an enhanced and a deeper understanding of negotiating in India and China.
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9 **Negotiating Skills in India and China**


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