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## Sequencing, Acoustic Separation, and 3-D Negotiation of Complex Barriers: Charlene Barshefsky and IP Rights in China

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**Abstract.** Taking the perspective of the lead U.S. negotiator, Charlene Barshefsky, this article details and analyzes the negotiations that took place in the mid-1990s between the United States and the People's Republic of China over intellectual property rights (IPR). Employing a "negotiation analytic" methodology, Charlene Barshefsky's actions are interpreted to suggest a number of promising approaches to managing the daunting complexities of trade and other negotiations: recognizing the multiparty aspects of apparently bilateral dealings and capturing them in a "deal diagram;" carefully assessing "barriers" to agreement; sequencing to build a winning coalition and overcome potentially blocking ones; "acoustic separation" of issue-frames; and, most broadly, changing the game advantageously relative to a purely tactical orientation "at the table" through 3-D actions "away from the table."

**Keywords:** cross-cultural negotiation, intellectual property, international negotiation, negotiation analysis, trade, U.S.-Chinese negotiation

International trade negotiations pose notorious complexities, especially in their multilateral form.<sup>1</sup> Even in nominally bilateral trade talks, however, barriers to agreement can be dauntingly complex, involving multiple parties, levels, and tactical choices. This article analyzes one such set of negotiations that took place in the mid-1990s between the United States and the People's Republic of China over intellectual property rights (IPR).<sup>2</sup> Presented mainly from the viewpoint of a key protagonist, then-Deputy United States Trade Representative (USTR) Charlene Barshefsky, and drawing primarily on U.S. sources, this account helps to explain how an agreement was reached that many influential parties opposed at the time and that informed observers judged quite unlikely.

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This case may be of interest to those focused on the dynamics of the “new” trade agenda of intellectual property and services rather than more traditional tariffs and non-tariff obstacles to free trade. Yet beyond these policy issues is a close reading of the kinds of complex barriers facing those who seek agreements in international negotiations and the complex strategies and tactics adopted by negotiators to surmount them. Insights from this analysis can inform both explanatory and prescriptive theories, especially the emerging methodology of “negotiation analysis.”<sup>3</sup> In particular, Barshefsky’s strategy incorporated several distinctive elements: a series of disaggregated, sequential actions “away from the table” to build a winning coalition and overcome potentially blocking ones; efforts to “acoustically separate” different messages for different parties at different levels; and steps to make sanctions threats credible, to change the game and to shape Chinese incentives for agreement, rather than more frequently studied tactical moves “at the table” to play the “game as given.” As such, this case offers an illustration of the 3-D approach of Lax and Sebenius in which the first dimension is interpersonal *process*, the second *substance*, and the third the *scope* of the game itself, whether fixed or variable.<sup>4</sup>

The analysis will proceed in three steps: (1) a description of the context and an assessment of the major barriers facing Barshefsky and others who favored an agreement backed by the threat of sanctions; (2) an account of the overall strategy and highly differentiated, sequential tactics used by Barshefsky for a tailored approach to each set of parties and associated barriers; and (3) an assessment and some possible generalizations from this extended episode.

### **Context and Major Barriers**

In 1993, piracy of U.S. intellectual property in China raged. Chinese pirates counterfeited Madonna and Michael Jackson CDs by the millions, bootleg copies of new U.S. software launched on Chinese PCs across the country, and popular movies like Jurassic Park appeared as DVDs in the back alleys of Shanghai long before their release in theaters in the United States.<sup>5</sup> Growth in China’s economy coupled with increasingly sophisticated counterfeiting techniques fueled piracy on a scale never before witnessed, especially in the southern province of Guangdong, widely regarded as the most capitalist-oriented and free-wheeling Chinese province. To demonstrate the urgency of the piracy problem (encompassing piracy of copyrighted works – including computer software, audiovisual works and published works – and of trademarks), U.S. officials highlighted the existence of 29 factories in southern China that churned out an estimated 75 million illegal CDs and laser disks

(LDs) per year. Because the Chinese domestic market for CDs amounted to only 5 million disks, the U.S. further contended that Chinese pirated CDs were being exported on a massive scale, threatening markets from Hong Kong to Canada.<sup>6</sup> As Bonnie Richardson of the Motion Picture Association observed, “the IPR problem became massive not because of the domestic Chinese market; the piracy problem reached the pinnacle it did because China had become the world’s largest exporter of pirated materials. This is what raised attention levels.”<sup>7</sup>

Industry associations and executives, especially from the sound and movie recording sectors, had lobbied hard for this “blatant abuse” to be stopped. Yet all previous attempts by USTR to address the problem had fallen short. Too many interests within and outside of Washington aligned against – or were ambivalent about – meaningful action on China IPR.

One of Charlene Barshefsky’s first assignments as Deputy United States Trade Representative was to “do something” about a new intellectual property rights agreement with the Chinese. In her judgment, real results would require a multi-pronged approach, underpinned by a threat to initiate Section 301 sanctions – a form of unilateral action permitted under U.S. trade law to address unfair trading practices abroad.

Yet, many observers assumed that, at best, she would deliver just what her predecessors had: a promising deal on paper that did little if anything to actually stop actual counterfeiting of American products. Such skepticism about reaching a meaningful agreement, especially one backed by sanctions, was grounded in an appreciation for a series of the daunting barriers that hindered results: active Chinese opposition along with passive opposition by many of its non-U.S. trading partners; deep hesitancy by the White House following its recent and spectacularly unsuccessful effort to sanction China over human rights practices; an influential segment of the U.S. business community urging forbearance, given its major Chinese investments that risked retaliation; as well as several groups – environmental, labor, human rights, and national security – that opposed “squandering” the potent U.S. leverage of sanctions on “CDs and videos” rather than husbanding that leverage for possible use on their preferred issues.

*Barrier #1: Adamant Chinese opposition.* The most obvious foe of IPR protection reform in China was the Chinese government itself. The Chinese keenly opposed USTR’s persistent calls for change in its IPR regime, and even more, the idea of following through on any form of U.S. demand. The Chinese had grudgingly signed IPR agreements in the past, but for the most part had yet to follow their dictates. Several bungled U.S. sanctions attempts, China’s awareness of the allure to U.S. businesses of the 1.2 billion-person

“China Market,” and the readiness of international competitors to step in to fill U.S. business’ shoes gave Barshefsky’s Chinese counterparts great confidence that she could never build a coalition strong enough to make headway on the issue. The Chinese felt all-too-confident that, even if the United States and China did sign yet another IPR agreement, it would surely languish with its predecessors, inert and unenforced. Even the 1989 horror of Tiananmen Square had not resulted in sustained U.S. trade sanctions.

*Barrier #2: Competing non-business U.S. interests.* Multiple U.S. interests in effect aligned with the Chinese in opposing sanctions-driven negotiation on IPR, concerned that such action could adversely affect their issue-areas. The U.S. national security community coveted China’s potential leverage over rogue states such as North Korea and viewed Chinese missile sales to Iran and Pakistan as primary objects for U.S. diplomacy. Human rights groups did not want to waste U.S. negotiating capital on “low-level commercial considerations” in the face of China’s treatment of dissidents, policies toward Tibet, alleged exploitation of prison labor, forced abortions, and so forth. Environmentalists were alarmed at Chinese overpopulation and staggering increases in pollution that, if left unchecked, would fuel the engine of global warming. In short, going to the mat with the Chinese over a “few pirated CDs” would be opposed by powerful groups within the United States that advocated other important agendas in the U.S.-Chinese relationship.

*Barrier #3: A divided, often-opposed U.S. business community.* As for the business community, who stood on which side turned out to be a complex matter. Core IPR industries like film and sound recording led the push. But not all industry executives believed USTR should rock the boat. U.S. businesses with a stake in the China market countered forcefully. The last thing businesses already deeply engaged in China or avidly pursuing the Chinese market needed was soured relations from a fight over IPR. International competitors stood all-too-ready to fill the void. The crude form of the argument went like this: “Does anybody really believe the Clinton administration is prepared to shoot down Boeing’s access to its most lucrative new growth market for commercial aircraft, that it would let Toyota walk away with the rich contracts sought by General Motors and Ford to build engines for China’s awakening automobile industry?”<sup>8</sup>

Division even characterized the U.S. IPR community itself. Balancing the steady-as-you-go sentiments of U.S. IPR-focused businesses that were already entrenched in China with the very real needs of the intellectual property industries harmed by rampant piracy and other IPR violations would be no easy task. While record, film, and pharmaceuticals executives were familiar Washington D.C. fixtures, many in key IPR industries, such as

business software, had largely disdained political involvement in the United States, preferring instead to concentrate on “real” business. Indeed some software companies vaguely supported piracy inasmuch as it further established their products as standards in the world market. It remained unclear whether IPR issues could provide a strong enough rallying call to overcome business interests intent on coping with, maintaining, and even manipulating the status quo in China.

*Barrier #4: White House reticence following the MFN-Chinese human rights debacle.* Even Barshefsky’s own colleagues in the Clinton administration disagreed on how to proceed on China IPR. For his part, President Clinton would tread very cautiously after the humiliating failure of the last U.S. attempt to toughen its position on China through trade sanctions. During the 1992 presidential campaign, candidate Clinton had excoriated George Bush over America’s “coddling” of the Chinese on human rights. Soon after his election, Clinton signed an executive order to deny China’s Most Favored Nation (MFN) trade status absent Chinese progress on human rights. The prospect of this action unleashed widespread opposition.

For example, China informed AT&T executives that, should Clinton revoke MFN status or attach conditions, China would cancel the first phase – a \$100 million joint venture in Qingdao – of a multi-billion dollar project to build the framework for China’s telecommunications network. The message to U.S. businesses was clear: tamper with China’s MFN status and beware of the consequences. As a result, AT&T became a prime signatory of a letter sent to Clinton intending to influence his 1993 MFN decision. The letter, signed by 298 influential U.S. companies and trade associations, strongly urged Clinton not revoke or attach conditions to MFN.<sup>9</sup>

Business opponents were hardly alone in the human rights-MFN episode: Clinton’s executive order evoked studied indifference in the international community and outright defiance – not cooperation – from the Chinese, who, among other measures, stepped up the arrest of dissidents. In a politically humiliating about-face, a deeply embarrassed Clinton ultimately felt forced to revoke the order.

When Barshefsky raised the political specter of yet another sanctions threat against China, this time to protest IPR violations rather than the human rights focus of the previous attempt, some in the Clinton administration such as then-Treasury Secretary Robert Rubin, argued that a get-tough sanctions approach was the right road. Yet other aides felt badly burned by the MFN-human rights debacle and were leery of reliving it. In its first few years, the Clinton Administration had used sanctions threats in nearly every major policy area vis-à-vis China. As one commentator explained, “the threat of sanctions in all areas has simply overwhelmed the relationship.”<sup>10</sup> So, like

many other pockets of the American community, the White House itself could not offer the solid backing needed to bolster Barshefsky's credibility with respect to any new threat of sanctions to obtain an IPR deal with China.

*Barrier #5: Lack of active support from other trading partners.* Like some sectors of the American business community, many U.S. trading partners tacitly supported a sanctions-based stand against IPR violations in China in principle, but for the most part would refuse to overtly join forces in the battle, fearful of the consequences to their national industries. According to Kenneth Lieberthal, "[t]he fact that in almost every instance the other G-7 countries have not supported America's threats has made Washington's claim that it is acting on behalf of widely accepted international norms ring hollow."<sup>11</sup> And, obviously, actors like Hong Kong were caught in the middle and could not support U.S. sanctions even if they were minded to do so.

*Other potentially complicating factors.* Of course, the list of existing barriers could easily be expanded. For example, although she had scored notable deal-making success in her 18-year private sector career at Steptoe & Johnson in Washington, D.C., Barshefsky had never worked in government, nor was she well-versed in operating in an environment as highly politicized as USTR had become. As a political outsider, unlike many previous USTRs, she had comparatively little direct familiarity and few personal relationships with key members of Congress. Additional potential obstacles could be found in several other realms: national cultural differences between the United States and China, specific personalities, issues of gender and status, decision-making complexities on all sides, legal and institutional blockages to action, as well as the technical and economic complexities and linkages of the issues themselves.

All these extra barriers, however, would operate through the main parties involved directly or indirectly with the negotiation. Thus, one way to represent the complexities detailed above is with a deal diagram (Figure 1) roughly indicating which parties favored, were skeptical of, or could be counted on to oppose Barshefsky's sanctions-driven IPR policy. This representation highlights the paucity of obvious support and the daunting nature of the challenge for an advocate intent on negotiating such a policy into meaningful existence. Of course, one reasonable conclusion that might have been reached from this exercise of characterizing the parties by their level of support might have been to abandon the effort or seek merely to be *seen* as acting for political cover purposes. Nevertheless, the organized steps Barshefsky orchestrated to overcome these barriers suggests a more general approach.<sup>12</sup>

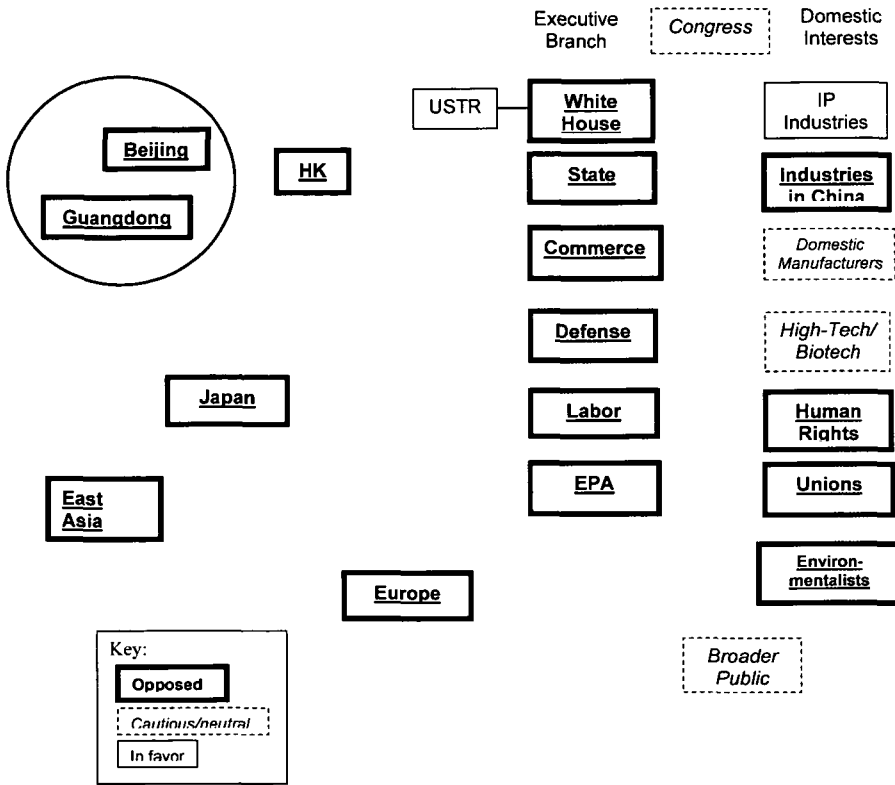


Figure 1. IPR deal with sanctions threat: Likely initial alignments.

### Surmounting the Barriers: A Disaggregated, Sequential Approach

Arguably, success in this negotiation required winning a “three-front” war: a domestic battle; conflicts with non-Chinese trading partners and allies; and a struggle with Chinese counterparts. Barshefsky knew that she could not count on White House support unless she had domestic interests – especially business – behind her or neutralized. Without both of these elements, negotiations with the Chinese likely were doomed. And in Chinese-U.S. negotiations, support from other allies, whether overt or tacit, would be very helpful. Thus, while much activity (necessarily) proceeded simultaneously on each of these fronts, Barshefsky adopted a distinct sequential emphasis: (1) domestic interests; (2) the White House and Congress; (3) U.S. allies; and (4) China, both Beijing and key provinces. As detailed below, a specially designed approach, with major elements *disaggregated* and tailored to each segment, and carefully *sequenced*, was used to build what could be described as a *de facto winning coalition* in favor of an IPR agreement.<sup>13</sup>



*The Domestic Front*

After she took actions detailed below, to unify the coalition that would naturally support her position, Barshefsky understood that an important element of her strategy would necessarily include framing the issues, carefully tailoring the frame for various audiences. The wider public and Congress needed a simple, persuasive message grounded in terms of the broader national interest. Domestic spoilers likely to block this initiative needed potent arguments showing that these negotiations would benefit more than just industries seen as favored by Democrats (film, music, software), but would actually advance other groups' interests as well. Further, she needed to make the case that a sanctions-backed push for IPR was neither reckless nor likely to provoke a U.S.-Chinese crisis. Interestingly, while these arguments were aimed in the first instance at neutralizing the opposition of key domestic interests, they were also essential to gain credible White House backing for powerful "external" diplomacy. Consider each of these efforts in turn.

*Unifying a supportive coalition and making the general case.* The International Intellectual Property Association (IIPA) and its affiliates offered a ready-made, fully supportive, and highly-informed coalition to tap. Intellectual property industry associations had startlingly detailed facts and figures at hand to describe the nature and extent of IPR abuses in China. Their research provided specifics that would prove to be essential underpinnings in the process, both to convince various interests within the United States to act and to demonstrate to the Chinese that USTR meant business.

An important part of the process would certainly be to exploit the growing public recognition by the early 1990s that America's comparative advantage lay in its intellectual property industries. Vocal mainstays of the intellectual property community included the politically influential motion picture and sound recording industries. They were major American export powerhouses in their own right and had significant Washington operations.

Unlike the entertainment companies, with the technological revolution of the 1980s and 1990s, business software and other technology-based intellectual property interests were increasingly troubled by their lack of IP protection abroad. Yet they were at this time only beginning to expand their presence in Washington. In fact, their issues were largely raised *independently* of the traditional record, film and pharmaceutical industry concerns. Barshefsky and her colleagues increasingly linked the concerns of all industries, pointedly including all of these interests in meetings, ensuring that numerous industries testified at the same hearings and discussed their testimony and common concerns in advance, etc. She advanced this strategy in part to ensure that these otherwise separate IPR proponents began to

coordinate their actions. Barshefsky saw that helping to midwife this *de facto* IP-industry coalition could make the intellectual property lobby a far more formidable player in Washington.

*Broadening the frame to gain business acquiescence.* USTR actively promoted the IPR problem as a broader concern extending beyond CDs, videos, and lost sales in China. In a January 1995 press conference, Barshefsky's superior, then-USTR Mickey Kantor, relayed the story of how a U.S. negotiator visited a store in Beijing on a recent negotiating trip and bought what was labeled as a bottle of Proctor & Gamble shampoo. Later he found the bottle contained lye and a counterfeited Proctor & Gamble label.<sup>14</sup> A rash of pharmaceutical counterfeiting heightened awareness in China and abroad of the public safety (and negative marketing) implications of unchecked IPR piracy in China. Bonnie Richardson of the Motion Picture Association recalled another press conference when Kantor stood up waving a box of fake Kellogg's Corn Flakes. She explained, "this was not just a copyright issue. It was [an] issue that affected companies well beyond LA."<sup>15</sup> In the face of accusations that the Executive Branch pampered Hollywood and Seattle at the expense of other domestic interests, USTR emphasized that Chinese IPR violations damaged a broad range of U.S. industries, adversely affected products' reputations, threatened health and safety, and had the potential to reach devastating proportions should violations go unheeded.<sup>16</sup> Furthermore, these consequences were magnified given that much pirated material was exported from China to other markets.

In her attempt to secure the backing of the divided business community, Barshefsky adapted the broadening approach still further. She emphasized that a company didn't have to be a movie or recording studio or Microsoft to suffer from IPR abuses in China. As China liberalized its import and export policies, protecting patents, trademarks, and copyrights had become increasingly crucial to businesses everywhere. Barshefsky repeatedly emphasized that improved protection of IPR in China would have a positive effect, in the long run, for *all* businesses operating there. Enhanced IPR protection would mean enhanced *rule of law*, something all U.S. businesses engaged in China (and other interest groups) sought to foster.

Her carefully planned strategy to garner the support – or tacit acquiescence – of the American business community was also aided by a bit of luck. In 1995, Barshefsky received a signal from the CEO of one of America's most powerful and well respected businesses, one that not-coincidentally was heavily entrenched in the China market. He signaled that his company was willing to withstand Chinese retaliation against sanctions in the short term if it meant attaining strong IPR protections in the long-run. He acknowledged

that strong IPR protections were important enough to the sustainability of his business in China and around the world to take what might be a large hit to get there. Given this degree of foresight, it became more difficult for American businesses operating in China to refuse to follow suit.<sup>17</sup> Though U.S. companies still shied away from outright confrontation with China, many of them silently cheered USTR's tough stance. As Rich Brecher, formerly of the U.S.-China Business Council, observed, "businesses deeply involved in China's market were purposefully not supportive, but at the same time did nothing to undercut USTR's efforts."<sup>18</sup>

*Broadening the frame to gain the acquiescence of non-business interest groups.* The business lobby might have been persuaded to bite its collective lip, but other groups could be counted on to mount vocal attacks. Labor interests were perhaps the only Washington lobby mainstay that could be counted on to back action on the China IPR issue – it would jump at any opportunity to reduce cheap Chinese imports. But a sanctions blowout threatened Chinese cooperation on security issues, environmental initiatives, and human rights promotion. Individuals representing these interests were certain opponents of a sanctions threat and had little reason to keep their concerns silent.

Barshefsky hoped that her broadening strategy might be persuasive in this forum as well. She therefore focused attention on the expansive scope of the problem by emphasizing that IPR violations related to broader U.S. concerns over the rule of law and respect for individual rights in China. In meetings, press conferences, and media appearances, Barshefsky and her colleagues maintained that forcing China to live up to its commitments and follow the letter of its own IPR law would enhance China's participation in the world community to the benefit of a wide array of U.S. policy interests. If Washington could successfully stand up against Chinese IPR infractions backed by a united domestic front, how many other U.S. initiatives might also fall in line behind a rule of law agenda? Though certainly no cure-all for U.S.-China tensions, cracking down on IP piracy held the potential to lead the way in securing a wide range of American interests. According to Barshefsky, these arguments were potent for her State Department colleagues representing non-trade policy interests in China. If the United States failed to insist that China follow its agreements with the United States and *the letter of China's own law* (i.e., Chinese IPR laws were strong, however enforcement was weak),<sup>19</sup> "how could the United States expect to move China in a direction compatible with Western legal norms?"<sup>20</sup> With Barshefsky's clever prodding, IPR came to be seen as a test case for whether China could conform to its own law. And for other groups, hoping to forge agreements with China in domains as

diverse as security, human rights, and the environment, how could treaties be worth anything if China didn't actually comply with and implement them? Thus Barshefsky linked her IPR initiative with other groups' interests in far wider topics.

*Narrowing the frame.* Alongside with efforts to broaden the frame within which IPR would be viewed, Barshefsky sought, perhaps paradoxically, to narrow it in key dimensions. Specifically, her narrative drew on a "logic of similarity," matching tailored *trade* sanctions to *trade* violations. The previous hard-line attempt against China, specifically the 1993–94 MFN struggle, failed in part because the relationship between trade and human rights seemed to lack more than an opportunistic rationale: why should the United States impose *trade* sanctions for perceived Chinese *human rights* abuses? Those interests hurt by MFN withdrawal could and endlessly did cite this disconnect. Conversely, imposing trade sanctions on China for IPR violations seemed a more "natural" recourse. Slapping China with sanctions commensurate in value with the loss of U.S. property due to Chinese piracy resonated. Barshefsky repeated a potent mantra: "we will sanction Chinese trade with us in direct proportion to the extent that China is stealing from our trade with them." Thus, framing both sanctions *and* the IPR agreement as part of the *same issue-area* with an easily comprehensible and powerful *proportionality* argument added to its appeal.

Beyond the appeal of a narrowed and tighter logical relationship between trade issues and proportional trade sanctions lay a political argument vis-à-vis the Chinese. Whereas the MFN-human rights link had evoked the "high politics" (for China) of security and sovereignty concerns, a case could be made that trade issues could be dealt with, if desired, by China as a matter of the "low politics" of commercial considerations. Hence, this narrowed frame could be invoked to make the case with less risk than the MFN-rights link had entailed.

What emerged, then, was a strategy of "acoustic separation:" selective broadening and narrowing of the issue to fit Barshefsky's needs at different points in the negotiation and with different audiences. At times, Barshefsky made the issue appear very narrow – a trade sanction for a trade violation. In other fora, Barshefsky opportunistically chose to portray the issue as far greater than a special interest gambit. Instead, the issue transcended lost Chinese sales by a comparatively narrow segment of U.S. industry. The problem covered a wider set of businesses, counterfeit exports from China, considerations of product reputation and even safety, as well as a broader rule of law concern. Barshefsky consequently made action on IPR a catch-all for resolving pressing issues in virtually every facet of U.S.-China relations.

*Congress and the White House.* Within White House walls, Barshefsky expected, at a minimum, to find skepticism. Yet, as USTR's efforts to win over business and other domestic interests bore fruit, it became politically safer for the White House to support her sanctions-backed IPR initiative. Moreover, Barshefsky saw that IPR violations represented an opportunity for President Clinton to reassert his control over U.S.-China relations and to demonstrate his willingness to defend American interests against Chinese transgressions. As one trade analyst put it, "IPR gave Clinton a golden opportunity to be tough in a way that made sense to a pretty wide audience."<sup>21</sup>

Many White House advisors still counseled against the sanctions approach, both because of the risks of yet another bungled attempt and the very real damage Chinese counter-sanctions could produce. But Barshefsky was clear that the threat of sanctions would only follow a much more deliberate process of exhausting other avenues and ceaselessly preaching the mutual benefits of IPR enforcement. As these efforts failed to produce necessary results, Barshefsky, along with Robert Rubin and others, began to believe that aggressive sanctions action had the most potential to achieve U.S. objectives. In the end, Barshefsky noted, "there reaches a point where it becomes important to get tough, especially in this case where the Administration had concerns over appearing 'soft' on China."<sup>22</sup> Ultimately, she would argue, the timing for a sanctions threat on IPR was right.

Fortuitously, the Congress was receptive to her arguments for tough sanctions threats. Fueled by the rising bilateral trade deficit, the growing importance of broad IPR business interests to the strength of the American economy, and congressional frustration over the stagnant MFN debates, members of Congress craved an opportunity to take a stand against China's unfair trade practices. Constituents, convinced that China acted unfairly when it came to trade, were eager to see their representatives take decisive action. Standing firm on IPR offered Congress an opportunity to *do something*.

Barshefsky also recognized that, given the negative impact of the 1993–94 MFN controversy, this IPR initiative could deteriorate into another crippling domestic debate. To address this concern, she hammered away at the central logic of punishing *trade* violations with *trade* sanctions. Unlike the threat of withdrawing MFN, in effect severing the U.S.-Chinese economic relationship, the logic of targeted, proportionate trade sanctions for trade violations suggested a "winnable" battle. With the carefully garnered support, or at least acquiescence, of powerful constituents within the business community and other domestic interests, Barshefsky gradually convinced the Administration and key members of Congress that this time would be different.

In seeking political backing for this course of action, Barshefsky and her colleagues could also argue the standard strategic paradox: the more credible

the threat of White House and Congressional support for sanctions, the less likely the threat would need to be exercised and the more certain a diplomatic victory on IPR. She consequently earned significant political support in tandem with her mobilization of the business community and other domestic interests.

### *International Trade Partners*

Preventing the international community from opposing and undercutting threatened sanctions was also a necessary but difficult step in building a strong coalition. Naturally, little support for sanctions could be expected from those economies, especially in Southeast Asia, that stood to lose much should sanctions and counter-sanctions be imposed. For example, when the United States ultimately imposed its sanctions threat, prior to a February 1995 deadline and in anticipation of an all-out trade war, stocks in the Hong Kong exchange plummeted. According to media reports at that time, \$1.45 billion of Hong Kong re-exports (exports from China routed through Hong Kong traders) would be caught in the crossfire if a trade war were to escalate.<sup>23</sup> Here too, however, the sequential logic Barshefsky pursued carried weight: with White House and Congressional support cemented, the likelihood of sanctions – and major “collateral damage” to trading partners – could only be mitigated if China made an IPR deal with the United States. Thus, trading partners felt an incentive to focus their own persuasive efforts on China with respect to this issue if only to lessen the chance of a trade war.

Barshefsky also realized she could sing the same “long term” songs she had sung in other quarters to persuade Hong Kong that a tough stance was the proper course. The Hong Kong government had piracy worries of its own. Many of its re-exports were counterfeited goods – an activity Hong Kong officials were anxious to see stopped in the interest of boosting confidence in its market. Furthermore, the Hong Kong economy benefited tremendously from investor confidence in the mainland Chinese market. Though strained relations posed a risk for Hong Kong in the short term, Barshefsky emphasized that a more solid IPR environment on the mainland would be good for Hong Kong businesses in the future. Due in part to USTR’s persistence, Hong Kong’s eventual position thus mirrored that of the U.S.-China Business Council and many other large-scale groups invested in mainland China: keep the U.S. government informed of interests involved, but neither support nor attack U.S. actions.

Barshefsky also argued to other major trading partners such as the European Union and Japan that IPR advances in China would benefit the global trading system, whereas a U.S.-Chinese trade war would carry collective costs in excess of whatever gains U.S. trade competitors would reap. Although

reluctant to support U.S. sanctions against China overtly, these international actors provided an important source of indirect pressure, especially through exploiting the keen Chinese interest in joining the World Trade Organization (WTO, the successor to the GATT). As a senior Japanese official at the time explained in a widely publicized press conference, “If China meets U.S. demands that it develop mechanisms to control piracy, that would be ‘conducive’ to the world trade system . . . However, if China [does] not make a big effort to settle the dispute, ‘it would at the very least send a very disappointing signal to the members of the WTO.’”<sup>24</sup>

### *The Chinese*

While her direct negotiations with the Chinese were lengthy and spanned two distinct stages, Barshefsky’s approach had four core elements: (1) a prolonged, “educational” process that framed an IPR regime as beneficial to China long-term; (2) efforts to minimize the perceived intrusiveness and sovereign challenge inherent in U.S. demands; (3) a series of actions aimed at increasing the credibility of the sanctions threat in the event of impasse; and (4) an aggressive information-gathering and diplomatic thrust beyond Beijing into the provinces. Each of these thrusts functioned to shape Chinese perceptions of the value of a deal relative to the value of their no-deal alternatives. Barshefsky’s actions on the Chinese front represented the culmination of the disaggregated, sequential negotiating strategy – starting with domestic U.S. business interests – that she undertook to gain IPR agreement.

*Framing an IPR regime as in China’s deeper interest.* While much public commentary surrounding these negotiations focused on the sanctions threat, which Barshefsky felt was essential as *part* of a strategy, she actively sought to avoid actions that fed the perception that China had caved in to foreign demands. She explained, “Commercial settings demand win-win agreements. Both sides may compromise, but unless each side can leave the table with its core demands met, no deal will happen, or, if it does, it won’t be enforced.”<sup>25</sup> In this light, Barshefsky believed that shoving threats down the throats of Chinese counterparts would achieve little. Success would flow only from a sincere, persuasive effort to show that Chinese and U.S. interests aligned on IPR.

As such, her initial efforts, taking place over several months and multiple trips to China, predominantly took the form of seminars and briefings offered to a wide range of Chinese officials as opposed to late night, table-pounding sessions. One of China’s top priorities since the restoration of trade relations in the late 1970s had been to acquire foreign technology and the know-how to develop its own domestic industries and boost its economic strength.

Barshefsky knew the narrative force of emphasizing to the Chinese that its IPR enforcement difficulties gravely threatened these efforts. She therefore emphasized that “China knew it needed to accelerate its development, and that to do so it would need to jump over many of the stages of development that characterize the history of other advanced economies. They understood that strong IPR protection could be important in helping to leapfrog the developmental hurdles that China faced.”<sup>26</sup> Barshefsky lined up a procession of U.S. high-tech executives to underscore to Chinese listeners that current-generation technology would *never* be transferred in scale absent real IPR protection.

The force of this argument was compounded by another stroke of luck. “It just so happened that one of my principal counterparts in China’s State Council,” Barshefsky explained, “was himself a scientist, and understood perfectly that the lack of intellectual property enforcement was dampening indigenous scientific progress in China.”<sup>27</sup> Without real IPR protection, *Chinese* industrial designs risked being counterfeited. The argument that IPR protection was in China’s self interest gained force in light of China’s justifiable pride in the world-class prowess of its scientists and awareness of its increasing commercial footprint globally.

Barshefsky also took full advantage of China’s keen interest in accession to the WTO – both as a carrot and a stick. China had formally applied to become a contracting party to the international trade body in 1986 (then known as the GATT).<sup>28</sup> But due to inconsistencies between China’s foreign trade system and WTO principles in addition to opposition from key WTO members, China’s bid to join thus far had been unsuccessful. China desired the prestige, trade stability, and international acceptance that came with WTO membership. In addition, membership could seal permanent MFN status for China, ending years of frustrating annual uncertainty as the U.S. Congress debated the Chinese MFN question. In coordination with compatible messages from non-U.S. trading partners, Barshefsky ensured that WTO accession became a major incentive for the Chinese to take IPR seriously.

*Narrowing the nominal issue.* While Barshefsky framed the issues in terms of China’s interests, she also minimized the supposed intrusiveness and significance of her demands. Critically, China already had a well-developed IPR regime on its books (largely as a function of earlier negotiations with the U.S.). Hence, Barshefsky consistently argued, these negotiations were not about forcing China to do something new against its sovereign will; instead, both China and the United States nominally agreed on IPR principles and their long-term value. As such, this negotiation was about the “subordinate” concern of *enforcement* of an agreed-upon regime. And, in line with her



efforts to align these demands with China's own welfare, "enforcing its own laws" was arguably in China's self interest.

The issues were further narrowed by emphasizing the direct connection between IPR concerns and economic measures. As Barshefsky contended, "the Chinese can make the connection between policies that relate to commercial matters. Here they saw the *equation* much more clearly than in prior U.S. MFN actions related to human rights. Our message was so clear: Pirates are stealing from us, so here's a proportionate response in the same commercial domain. This they understood."<sup>29</sup> The idea was to circumscribe U.S. demands as being within the realm of "low" (commercial) politics, without evoking the "high" politics of major sovereign challenge.

*Enhancing the credibility and salience of sanctions.* In tandem with appeals to Chinese interests, Barshefsky also worsened China's no-deal alternative by the threat of U.S. trade sanctions in the event of impasse. This threat, of course, critically depended on the support she had sequentially built up within and outside the United States. She was determined to adhere to a very focused, very precise list in articulating U.S. demands, including: a clear picture of what actions USTR expected (e.g., reorganization and streamlining of China's IPR enforcement mechanisms, greater prosecution of IPR criminals, confiscation and destruction of illegal products, etc.); exact deadlines for compliance; and the details of the review mechanism that would monitor enforcement should agreement be reached.

In compiling a sanctions list, Barshefsky targeted items relatively easy to source outside China, thus minimizing the effect on domestic American manufacturers dependent on cheap Chinese exports. Barshefsky further focused the sanctions on Chinese exports from provinces proven the worst IPR offenders. At the time, Barshefsky made sure that "the Chinese understood that the United States would be tough on what it saw as unfair Chinese trading practices. And the Chinese understood the political clout of American IPR industries."<sup>30</sup>

Barshefsky laid out a clear and attainable U.S. agenda for the Chinese. Targeted demands with measurable markers of progress such as long-term task forces and detailed enforcement schedules were consistent with Barshefsky's negotiating strategy and objective of narrowing the focus.<sup>31</sup>

*Bringing negotiations to the provinces.* Instead of following diplomatic protocol by negotiating exclusively with the central government in Beijing, Barshefsky organized a coordinated communication effort with business and local officials in provinces such as Guangdong, where piracy was concentrated. Barshefsky's team systematically gathered key provincial contacts

whom they consistently visited on their negotiating trips. Talking with officials and business leaders outside of Beijing not only provided more opportunity for direct communication with those in areas containing the worst IPR offenders, but created an opportunity for Barshefsky to make a much more accurate assessment of potential sanctions targets.

Although Barshefsky and her colleagues met regularly with contacts in Beijing, keeping officials in the main branches of the Chinese bureaucracy updated on the progress of negotiations, Beijing was furious with USTR for visiting provincial officials. These moves risked a damaging loss of face for Beijing officials who feared their authority was being undermined. But Barshefsky was prepared to take this risk in the hope that direct provincial knowledge plus the ability to focus sanctions threats on politically influential provincial players would translate into influence on Beijing.

## Outcomes

### *The (First) Deal*

By mid-1994, after months of intensive negotiating with the Chinese failed to meet the full range of U.S. demands, USTR mounted its promised sanctions threat on China totaling approximately \$1 billion. Eight months of tense process under escalating threats of sanctions, counter-sanctions, and Chinese promises to cancel several high-profile U.S. contracts came to a close following a marathon negotiation session on February 26, 1995, when a deal was finally signed.

Barshefsky hailed the conclusion as a “win-win agreement,”<sup>32</sup> calling it the “single most comprehensive and detailed [intellectual property rights] enforcement agreement the United States has ever concluded.”<sup>33</sup> But while Barshefsky was upbeat about the 22-page document, she was also realistic. “There is no question,” she explained, “that the key to this agreement will be implementation, and implementation means vigilance on the part of the United States as well as political will on the part of the Chinese government.”<sup>34</sup>

Though indeed the final word on the agreement would depend on the level of enforcement in the months and years that followed, Barshefsky had been careful to address the enforcement issue in the document itself. Whereas prior IPR deals had focused on improving the legal structure for IPR protection, Barshefsky’s deal was a document of *enforcement*. Among other elements, it outlined a Chinese “action plan” complete with dates and specific enforcement measures. During a six-month “special enforcement period” ending August 31, 1995, the Chinese pledged to step-up enforcement of its IPR

laws. Throughout this period, the United States and China agreed to consult regularly to determine the levels “to which piracy had been reduced in key areas of China.”<sup>35</sup> This gave USTR an important lever with which to evaluate progress, a lever which would prove crucial in the year to come.

### *The (Second) Deal*

Seven months following the February agreement, IIPA and USTR officials on a trip to Beijing announced that Chinese enforcement measures had not lived up to U.S. expectations. Early in May, 1996, after repeated consultations with the Chinese had failed to produce desired – and, from her viewpoint, previously agreed upon – actions, USTR again reinstated the 301 process, designating China as a “Priority Foreign Country” for its IPR abuses. In meetings with the Chinese, Barshefsky outlined several broad areas of failure in compliance based on the parameters of the 1995 agreement.<sup>36</sup>

Barshefsky and her team again focused pressure on provincial officials to comply with enforcement measures, especially those in Guangdong. Working with the help of the affected U.S. industries, Barshefsky honed U.S. demands to include closure of specific illegal factories. Unlike the earlier agreement that emphasized the adoption of enforcement measures such as confiscation, destruction and prosecution, the new round identified specific factories that USTR demanded be shut down. Thanks to the on-the-ground knowledge of the IPR industry associations and extensive provincial action by USTR, the list included the names of specific factories, their phone and fax numbers, precise addresses, and the names of key individuals in each operation.<sup>37</sup>

But because Barshefsky understood that local and even national leaders might be indirectly profiting from the listed factories’ activities, she knew she needed to do more to secure action. She told the Guangdong officials, in no uncertain terms, that, “if the factories are not closed, your textile industry will bear the burden. Period.”<sup>38</sup> Since textiles are a principal industry in Guangdong, both for employment and revenue, and because Barshefsky had built a high level of credibility in delivering on her promises, Guangdong officials became deeply concerned.

At first the Chinese responded by denying the existence of any pirating factories at all. Later, after further pressure, the Chinese explained that internal pressure (e.g., rumored involvement of People’s Liberation Army officials in the operation of the factories) prevented them from taking action. Finally the Chinese closed two factories. But that was not enough for Barshefsky.

In Beijing, as tensions mounted, Barshefsky received a surprise invitation to meet with President Jiang Zemin. She recognized that such an audience was rare and a particular honor for the Chinese to extend to a (mere) trade minister. Still, much to the complete surprise of both the Chinese *and* Amer-

ican sides, Barshefsky returned the following answer through her counterpart, China's trade minister: "I would be honored and delighted to meet with President Jiang, but I am afraid that would be impossible." When asked what she meant, Barshefsky responded, "I cannot meet with President Jiang and then impose sanctions. If all 15 factories are not closed, I will have no choice but to impose sanctions, and I do not want to put President Jiang, or you, in that embarrassing position."<sup>39</sup>

As Barshefsky reported these events back to the White House Situation Room, as a *fait accompli*, staffers sat stunned. But Barshefsky explained that she turned Jiang down because she firmly believed that the Chinese could and would do more. Later, then-Secretary of State Warren Christopher somewhat uncharacteristically wrote a note to Barshefsky saying he would never forget that night; the silence in the Situation Room was stunning. It was a gutsy move, but, in his normally cautious view, she had been dead right.<sup>40</sup>

Ultimately, China did do more. Over the course of the next two years, China closed 70 factories and exports of pirated products had been reduced to virtually nil.<sup>41</sup> In the years since the 1995–96 IPR struggles, enforcement of IPR has continued to occupy the agendas of USTR and its Chinese counterpart. In discussions of improvement in the months after the 1996 accord, Barshefsky noted that China had begun to make "important progress" in its anti-piracy campaign. Reaction from industry was likewise positive, if hesitant. Echoing concerns from the business community that the United States remain vigilant on IPR, Barshefsky acknowledged that the 1995 and 1996 Agreements had only "scratched the surface."<sup>42</sup> Explained Barshefsky, "We're by no means satisfied that piracy has been eradicated,"<sup>43</sup> Despite the positive press that followed the 1996 Accord and the pronouncements from organizations such as the IIPA that piracy in China had been reduced substantially, Barshefsky knew the IPR problem had been far from solved. It would remain an ongoing issue.

Nevertheless, as a Deputy USTR, her work on China IPR and other negotiating initiatives helped Barshefsky to become the 12th United States Trade Representative in 1997 (after a one-year stint in an "Acting" capacity). During her tenure, USTR negotiated more than 300 separate trade agreements, including the historic bilateral agreement with China on the terms of its accession to the World Trade Organization and Congressional passage of permanent normal trade relations for China.<sup>44</sup>

## Conclusions

Reviewing this extended negotiation, a number of conclusions and observations suggest broader application.

*An inherently multi-party, multi-level process.* While shorthand references abound to this and related episodes as “U.S.-Chinese” *bilateral* negotiations, the central negotiating reality was one of *multiple* parties and levels. More precisely, Barshefsky orchestrated a series of linked, bilateral negotiations within a multiparty structure. Illustrating this point, Figure 1 offered a summary schematic of the main involved parties and interests. From the standpoints of analysis and prescription, conceptualizing this negotiation mainly as bilateral dealings between two monolithic parties would lead one astray.

*A disaggregated, sequential, coalitional approach facilitated by “acoustically separated” issue-frames.* Complementing the “barriers” analysis at the start of this article, the implication of the initial “deal diagram” in Figure 1 is one of overwhelming opposition to a sanctions-backed IPR strategy. In stark contrast, Figure 2 illustrates the transformation of the majority of the opposition to neutral or positive stances, arguably in large measure as a function of Barshefsky’s strategy.

As such, and consistent with the “linked bilateral-multiparty” structure, a coalitional logic is central to account for the results. In the prior human rights-MFN debacle, a potent, *de facto* blocking coalition had formed against Clinton’s initiative consisting of the Chinese government in Beijing and U.S. business interests with activities in China. Barshefsky’s actions can be interpreted as pre-empting the formation of that coalition while sequentially building a sanctions-supporting, or at least sanctions-neutral, “winning” coalition with which ultimately to confront Beijing.<sup>45</sup> While her actions often overlapped and were, to some extent, necessarily pursued simultaneously, the *sequential emphasis* of her approach was roughly as follows:

- 1) unify supportive domestic IPR industries;
- 2) neutralize U.S. industries with a major presence in China;
- 3) assuage concerns of broader U.S. interest groups;
- 4) persuade the White House and key Congressional members that course of action including the ultimate threat of sanctions was politically attractive;
- 5) convince U.S. trading partners not to oppose the initiative and to privately play the WTO card in their dealings with China;
- 6) seek allies within the Beijing government;
- 7) take the process to the provinces, especially Guangdong, and credibly threaten core interests of influential players; and
- 8) deal intensively with Beijing under an implicit sanctions deadline.

While successful variations of this sequence can easily be imagined, its essential order and broader animating logic – dealing early with domestic

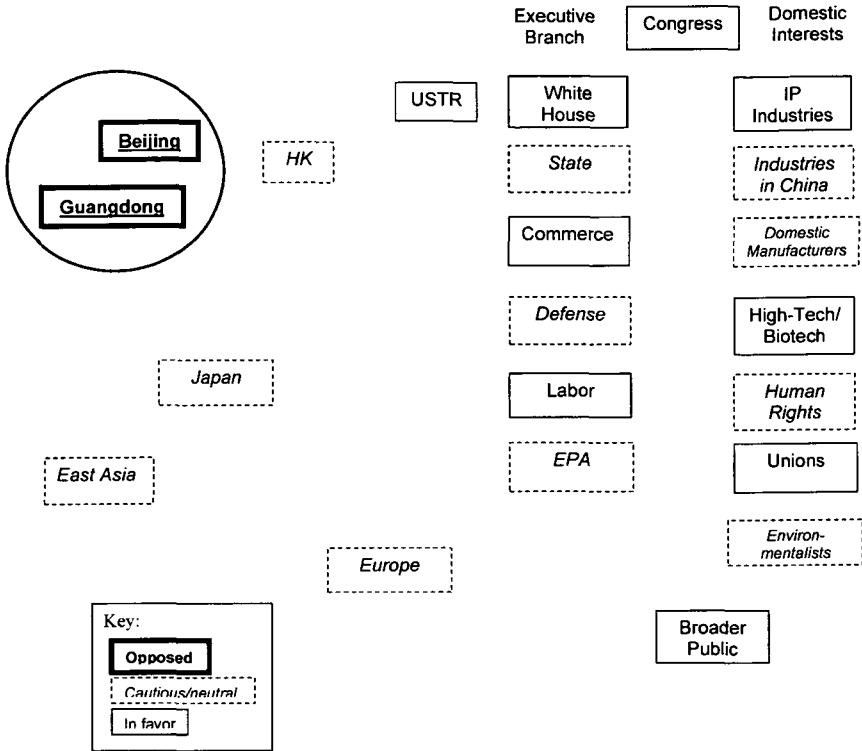


Figure 2. IPR deal with sanctions: Alignments toward end of process.

opponents and later with Beijing – were integral to Barshefsky’s strategy of managing great complexity and overcoming potent opposition.

Systematic efforts to frame the issue very differently for various parties appear to have underpinned this sequential approach. Sometimes called “acoustic separation” in legal contexts, controlling the “face of the issue” in politics, or “framing” in cognitive psychology, Barshefsky and her colleagues opportunistically stressed different, more palatable, attributes of the proposed agreement to different audiences.<sup>46</sup> Various and in combinations, the interests at stake were framed as

- 1) foregone U.S. sales in the Chinese domestic market,
- 2) pirated goods exported from China,
- 3) adverse reputational effects on brands and products,
- 4) health and safety implications of inferior counterfeit goods,
- 5) the potency of sanctions as a foreign policy instrument across many issue domains,
- 6) a “mere” technical enforcement issue of pre-existing Chinese laws,

- 7) an overarching “rule of law” issue with respect to future dealings between non-Chinese and the People’s Republic, and
- 8) an essential economic development instrument.

In practice, one can imagine considerable “leakage” among audiences as well as a skepticism of self-serving, “cheap talk.” Yet this case highlights the apparent tactical importance of acoustic separation and suggests further empirical investigation of whether and, if so, how and under what conditions, this phenomenon operates in complex negotiations.

*A “3-D” conception of complex negotiation: The relationship between tactics “at the table” and strategy “away from the table.”* Largely left out of the above account of Barshefsky’s approach was what many general negotiation observers regard as the essence of the process: interpersonal tactics “at the table.” Indeed, Barshefsky had a distinctive strategy, with both “educational” – think of the IPR “seminars” in Beijing – and “hardball” aspects. “I’ve heard jokes,” commented one IPR expert praising Barshefsky’s toughness and tenacity during the IPR talks, “that beneath [her] cold exterior beats a heart of stone.”<sup>47</sup>

*Barshefsky as tactician “at the table.”* For example, Barshefsky believes that negotiators should not be afraid to shake things up. After one lengthy, repetitive series of talks, she once passed a note to a colleague, directing him to leap up in frustration, slam his materials on the table and shout at her: “Ambassador Barshefsky, I know I may well be fired for this, but I cannot keep quiet any more. This process is going absolutely nowhere. We should just walk out and declare these pointless talks over!” Shocked by this apparently risky outburst, Barshefsky reports that their Chinese counterparts gaped. “However, the cadence and tenor in the room changed, and for the better. Soon, we were making good progress.”<sup>48</sup>

Yet willingness to play hardball and employ tough tactics must, Barshefsky emphasized, be coupled with flexibility and an ability to respond in an unexpected manner. During one particularly arduous negotiating session, the Chinese insisted they had gone as far as they could go on an important IPR market access issue. In making this point, the Chinese negotiator became very aggressive. Menacingly, he leaned far forward across the table towards Barshefsky and said flatly, “it’s take it or leave it.” Barshefsky, taken aback by his harsh tone, surprised her counterpart by sitting quietly. She waited 30–40 seconds – an eternity given the intensity of the negotiation, especially for an American – and came back with a measured reply: “If the choice is take it or leave it, of course I’ll leave it. But I can’t imagine that’s what you meant. I think what you meant is that you’d like me to think over your last offer

and that we can continue tomorrow. I hope you understand that what you're putting on the table is inadequate, but I am going to be thinking more carefully tonight about what you suggested." The Chinese negotiator was shocked that Barshefsky had not met his fire with fire of her own. Her unexpected response gave her counterpart a face-saving escape hatch and changed the tone entirely. When the two sides met the following morning, compromise ensued.<sup>49</sup>

And she stressed a familiar negotiating virtue: flexibility on the means coupled with crystal clarity and iron firmness on the ends. "You have to know what you want, and be able to articulate [it] in your own mind with precision."<sup>50</sup> Barshefsky later explained, "[this] sounds self-evident, but you'd be surprised how many people don't actually know what they want with the kind of precision that a negotiation demands. Then, you have to think of the 2,000 ways to get where you want to go: what the trades might be, what the arguments might be, what the moves might be on the other side. And you watch carefully, and listen carefully, talk less, and remain persistent."<sup>51</sup>

*Beyond tactician: Barshefsky as "3-D negotiator."* These tactical choices are clearly consequential. Yet, as David Lax and James Sebenius have elsewhere argued, a focus on process choices "at the table" can miss the essence of effective negotiation in many settings, which consists of actions "away from the table" to change the game advantageously.<sup>52</sup> We argue for a "3-D" conception in which interpersonal *process* is the first dimension, the *substance* of potential agreements is the second, and the *game itself* (closed or open; that is fixed or variable) constitutes the third dimension. Normally, scientific analysis seeks to define a situation precisely and then reason about those elements within a fixed frame. It would be difficult, *a priori*, to shoe-horn the Barshefsky-IPR episode into a fixed setting. Instead, this narrative illustrates systematic moves to include or exclude different parties in careful sequences, to include, exclude, or frame issues and interests differently, to consistently shape no-deal alternatives of the parties, thereby opening up a zone of possible agreement, and considerable efforts to shape the process itself.

If the five formidable "barriers" detailed at the start of this article – strong opposition to a sanctions-backed IPR deal from influential business, non-business, White House, trading partner, and Chinese quarters – are accurate, it is difficult to imagine mere tactics overcoming them. Instead, actions to change the game itself in order to create "space" for a desirable deal must be given pride of place. As Barshefsky herself is quick to emphasize, "tactics at the table are only the clean-up work. Many people mistake tactics for the underlying substance and the relentless efforts away from the table that are needed in order to set up the most promising possible situation once you



actually face your counterpart. When you know what you need and you have put a broader strategy in place, then negotiating tactics will flow.”<sup>53</sup>

The analysis of this article is, of necessity, limited to the perspective of the protagonist and the largely U.S. sources consulted. Systematically incorporating other perspectives, especially Chinese ones, would undoubtedly change the story, perhaps decisively. Yet the perspective of the focal negotiator, as informed by whatever he or she can glean about the other side(s), is frequently an inherent condition of the process. And “negotiation analysis” seeks a prescriptive theory of action, in order to advise one or more sides as to their most promising course of action conditional on the best available description of likely counterpart actions. Viewed in this light, Charlene Barshefsky’s actions suggest a number of promising approaches to managing the daunting complexities of trade and other negotiations: recognizing the multiparty aspects of apparently bilateral dealings captured in a “deal diagram” (like Figures 1 and 2); a careful assessment of “barriers” to agreement, sequencing to build a winning coalition and overcome potentially blocking ones; “acoustic separation” of issue-frames; and, most broadly, the power of “3-D” actions to change the game advantageously relative to a purely tactical orientation.

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### Notes

1. See, e.g., Winham, G.R. (1986) *International Trade and the Tokyo Round Negotiation*. Princeton, NJ: Princeton University Press. More generally, on complexity and international negotiation, see Zartman, I.W., editor (1994) *International Multilateral Negotiation: Approaches to the Management of Complexity*. San Francisco, CA: Jossey-Bass.
2. This article is very closely based on the research reflected in two Harvard Business School case studies written in close collaboration with Ambassador Barshefsky and other sources. For a more complete analysis and fuller citations for all quotations and sources cited in this article, see Hulse, R.G. and Sebenius, J.K. (2001) Charlene Barshefsky (A), Case No. 801-421. Boston, MA: Harvard Business School Publishing; Hulse, R.G. and Sebenius, J.K. (2001) Charlene Barshefsky (B), Case No. 801-422. Boston, MA: Harvard Business School Publishing. They can be ordered through the HBSP site: <http://www.hbsp.harvard.edu>.

3. See, e.g., Raiffa, H. (1982) *The Art and Science of Negotiation*. Cambridge, MA: Harvard University Press, Belknap Press; Lax, D.A. and Sebenius, J.K. (1986) *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain*. New York, NY: The Free Press; Neale, M.A. and Bazerman, M.H. (1991) *Cognition and Rationality in Negotiation*. New York, NY: The Free Press. For recent surveys, see Sebenius, J.K. (1992 (January)) "Negotiation analysis: A characterization and review," *Management Science* 38(2): 18–38; Sebenius, J.K. (2001) "Negotiation analysis," in N.J. Smelser and Baltes, P.B., editors, *International Encyclopedia of the Social and Behavioral Sciences*. New York, NY: Elsevier Science (Pergamon); Sebenius, J.K. (2002) "International negotiation analysis," V. Kremenyuk, editor, *International Negotiation: Analysis, Approaches, Issues*. San Francisco, CA: Jossey-Bass. For a practitioner-oriented survey, see Sebenius, J.K. (2000) *Dealmaking Essentials: Creating and Claiming Value for the Long Term*, Item No. 2-800-443. Boston, MA: Harvard Business School Publishing.
4. See Sebenius (2000) "Dealmaking essentials," Chapter Nine of Lax and Sebenius, editors. *Manager as Negotiator*; or, more broadly, Brandenburger, A.M. and Nalebuff, B.J. (1996) *Coopetition*. New York, NY: Currency Doubleday.
5. According to industry estimates, U.S. software manufacturers lost \$351 million in 1994 due to piracy in China. As for music CDs, an estimated 75 million CDs were illegally produced in China in 1994. Industry officials reporting in early 1995 estimated that Chinese counterfeiting cost U.S. companies approximately \$827 million a year. See Blumenthal, L. (1995). In China, Software Piracy is Flagrant – And Unpunished. *The Sacramento Bee*: A1; Cox, J. (January 3, 1995). USA Wants China to Curb Piracy. *USA Today*, 2B.
6. Representative, U.S.T. (1994). 1994 Annual Report: People's Republic of China. [www.ustr.gov/reports/annualrpt/1994/china.html](http://www.ustr.gov/reports/annualrpt/1994/china.html)
7. Interview with Bonnie Richardson, Vice President, Motion Picture Association, Washington, DC, May 29, 1998. Cited in Hulse and Sebenius (2001a), p. 8.
8. Reno, R. (February 22, 1995) "More saber-rattling over trade," *Newsday*, A36.
9. Aside from AT&T, signatories included American Express, Boeing, General Motors, IBM, Xerox, and 37 trade associations. For a discussion of various aspects of business opposition, see various citations in Hulse and Sebenius (2001a), including: John Kruger and Charles Lewis, "Bill's long March: When big money talked, Clinton retreated to George Bush's policy," *The Washington Post*, November 7, 1993, p. C3; Derrick Z. Jackson, "An ultimatum for China," *The Boston Globe*, March 12, 1996, p. 17; and Paul Marriage and Kennis Chu, "AT&T faces MFN backlash," *The South China Morning Post*, May 16, 1993, p. 1.
10. Lieberthal, K. (1995) "A new China strategy," *Foreign Affairs* November–December, 2–15.
11. *Ibid.*
12. Of course, Barshefsky hardly acted alone in these efforts. Members of USTR as well as White House and other operatives were actively engaged in these negotiations, which, nonetheless were choreographed by Barshefsky. Hence the above account is highly personalized to her.
13. See Sebenius, J.K. (1996) "Sequencing to build coalitions: with whom I should I talk first?" in R.J. Zeckhauser, R. Keeney and J.K. Sebenius, editors, *Wise Decisions*. Boston, MA: Harvard Business School Press, 324–348.
14. Tempest, R. (January 29, 1995) "U.S.-China near brink as piracy talks break off," *The Los Angeles Times*, A1.

15. Interview with Bonnie Richardson, Vice President, Motion Picture Association, Washington, DC, May 29, 1998. Cited in Hulse and Sebenius (2001b), p. 2.
16. See Alford, W. (1997) "Making the world safe for what? Intellectual property rights, human rights, and foreign economic policy in the Post-European Cold War World," *New York University Journal of International Law and Politics* 29: 1–2: 136–137.
17. Phone interview with Ambassador Charlene Barshefsky, former United States Trade Representative, March 26, 2001. Cited in Hulse and Sebenius (2001b), p. 3.
18. Interview with Rich Brecher, former Vice President of the U.S.-China Business Council, Washington, DC, May 28, 1998. Cited in Hulse and Sebenius (2001b), p. 3.
19. Earlier efforts on China IPR during the Bush administration had focused on reforming China's IPR laws to conform to international norms. In 1995–96, Barshefsky focused on the message that it was now incumbent on China to enhance and enforce these laws.
20. Barshefsky, March 26, 2001. Cited in Hulse and Sebenius (2001b), p. 4.
21. Interview with Greg Mastel, former Vice President of the Economic Strategy Institute, Washington, DC, May 29, 1998. Cited in Hulse and Sebenius (2001b), p. 4.
22. Barshefsky, March 26, 2001. Cited in Hulse and Sebenius (2001b), p. 4.
23. See various articles cited in Hulse and Sebenius, including: Uli Shmetzer, "Publicly, China vows to curb unfair trade, but business as usual for pirated products," *The Chicago Tribune*, January 7, 1995, p. N1; and Andrew Stevens, "Trade war could cost [Hong Kong] \$11 Billion," *South China Morning Post*, January 8, 1995, p. 1.
24. De Jonquieres, G. and Walker, T. (February 18, 1995) "Japan backs U.S. in China copyright war," *The Financial Times*, 3.
25. Barshefsky, March 26, 2001. Cited in Hulse and Sebenius (2001b), p. 5.
26. *Ibid.*
27. *Ibid.*
28. The World Trade Organization (WTO) replaced GATT on January 1, 1995.
29. Barshefsky, March 26, 2001. Cited in Hulse and Sebenius (2001b), p. 7.
30. *Ibid.*
31. Tempest, R. and Farley, M. (1995) "Heated dispute over piracy puts South China factory under fire," *The Los Angeles Times*, June 21, p. D1.
32. Faison, S. (1995) "U.S. and China sign accord to end piracy of software, music recordings and film," *The New York Times*, February 27, p. A1.
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34. Faison, p. A1.
35. USTR's 1995 *National Trade Estimate Report* (NTE); the 1995 NTE details the exact provisions of the agreement in greater detail.
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37. Barshefsky, March 26, 2001. Cited in Hulse and Sebenius (2001b), p. 9.
38. *Ibid.*
39. *Ibid.*
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