

# Players

## Who's Up To What

### Incapacitating Charlene

The U.S. capacitor industry — capacitors regulate power flows in computers, refrigerators, and other electronics — were furious when USTR Charlene Barshefsky negotiated away their tariffs in the Information Technology Agreement (ITA) last December. So Kemet Corp., which is headquartered in South Carolina; Massachusetts' Vishay Intertechnology, Inc., and 15 other firms that manufacture capacitors set up the Passive Electronics Coalition to try to get their tariffs back. They lobbied everyone from Barshefsky; her top ITA negotiator, Jeffrey Lang; the Pentagon; Al Gore; and lawmakers like Sen. Fritz Hollings (D-S.C.). But Barshefsky still cut the tariffs on capacitors from nine percent to zero; resistors went from six percent to zero.

So trade lawyers Leslie Alan Glick and Bart Fisher, of the D.C. office of Columbus, Ohio's Porter, Wright, Morris & Arthur (and Richard Markus, a retired Ohio appeals court judge who works out of the firm's Cleveland office) have sued Barshefsky in the New York-based U.S. Court of International Trade.

Glick and Fisher are arguing to U.S. Judge Jane Restani that Barshefsky had no legal authority to give away their clients' tariffs. The suit traces the ITA's legal authority to the residual tariff-cutting authority in Section 111(b) of the Uruguay Round Agreements Act, which went into effect in 1995. That act, Glick and Fisher maintain, is an unconstitutional delegation of legislative powers to the executive branch. The lawyers maintain that as no time limitation was included in the act, it is open-ended and hence unconstitutional as Congress may not confer to the executive branch permanently its authority to set duty rates.

The suit also says that even in the Uruguay Round's multilateral trade talks there was no authority to negotiate anything on capacitors or resistors.

Section 1102 (a)(2) of the Omnibus Trade and Competitiveness Act of 1988 delegated authority to cut duties above 5 percent by 50 percent, while duties of 5 percent or below could be eliminated. Neither fact pattern fits capacitors or resistors.

The Justice Department, which is representing Barshefsky, claims there were such lawful negotiations but won't produce records of them on grounds they are not subject to judicial review. (Barshefsky also has further strained her dicey relations with Sen. Hollings by refusing to give him the records.) At a hearing before Judge Restani in New York, Justice produced affidavits from Barshefsky and Jeffrey Lang, who couldn't thus be cross-examined. When Lang didn't show up to be deposed last month, Glick and Fisher filed a motion for sanctions.

A decision from Judge Restani on Glick's and Fisher's motion for a preliminary injunction is pending.