

## **Ruling Against CBP Strengthens Supply Chain Laws**

On July 23, 2023, the US Court of Appeals for the Federal Circuit Court ruled that US Customs and Border Protection (CPB) violated a pencil importer's right to due process when it shared only a redacted report with the Philippines-based manufacturer before making a determination that the company was evading duties.

CBP opened an investigation in 2018 when Dixon Ticonderoga accused Royal Brush of evading tariffs by importing Chinese pencils as products made in the Philippines instead. At the time, Royal Brush submitted data to back up its claims, and CBP sent staff to the Philippines to visit Royal Brush's supplier. However, when the CBP reached the conclusion that Royal Brush had evaded tariffs, the agency did not provide all the information it had collected: photos and numerical data were redacted from the documents. As Corey L. Norton, VP for Supply Chain Legality at World Wildlife Fund states, "there is no legitimate government interest here in refusing to provide confidential business information to [respondents] when all government concerns about the necessity of secrecy can be alleviated by issuing a protective order."

CBP argued that neither the CBP's own regulations nor the Enforce and Protect Act of 2015 allowed the agency to issue protective orders, but US Circuit Court Judge Timothy B. Dyk disagreed, saying "we are aware of no case supporting any such an extraordinary theory." The Federal Court concluded that "CBP relied on factual information that was not provided to Royal Brush to determine that Royal Brush had evaded duties. This, in and of itself, is a clear violation of due process."

The implications of this ruling go beyond this particular kind of case. As Norton points out, "In the forced labor area, there has long been a substantial friction between companies asserting they can't defend themselves or develop compliance programs effectively without allegation details that are normally withheld and the need to protect victim confidentiality and CBP investigation procedures." The decision of the Federal Circuit holds that by means of federal agencies' authority to maintain confidentiality using protective orders, there is no reason that counsel and clients cannot be granted their rights to due process in accessing critical information.

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Sources:

[https://cafc.uscourts.gov/opinions-orders/22-1226.OPINION.7-27-2023\\_2163900.pdf](https://cafc.uscourts.gov/opinions-orders/22-1226.OPINION.7-27-2023_2163900.pdf)

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