

# Shugrue and Lebow in Westlaw Today: Federal Circuit Holds the International Trade Commission's Confidentiality Practices Unlawful

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PRACTICES Insurance Recovery, International

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In a recent article for *Westlaw Today*, Haynes Boone Associate [Davis Shugrue](#) and Counsel [Ed Lebow](#) discuss two recent related Federal Circuit decisions involving the International Trade Commission's practice of automatically treating as confidential the questionnaire responses it receives in injury investigations.

Read an excerpt from the article below.

## **The Federal Circuit's decisions**

*The Federal Circuit considered two related appeals from decisions by then Court of International Trade Judge Stephen Vaden. The cases were originally captioned CVB, Inc. v. United States and OCP S.A. v. United States, but on appeal both were re-captioned as In re United States.*

*In the two decisions, the CIT questioned the ITC's confidentiality practices, finding that the ITC improperly treated public information as confidential merely because it appeared in questionnaire responses and that it infringed on the public's right of access to judicial proceedings. See *id.* at 1252–64; [CVB, Inc. v. United States, 681 F. Supp. 3d 1313 \(Ct. Int'l Trade 2024\)](#), dismissed sub nom. [In re United States I.](#),*

*In the In re United States I/CVB case, the parties moved for the CIT to take down a public opinion and re-issue it with redactions, claiming the opinion improperly released information the ITC treated as confidential. [CVB, 681 F. Supp. 3d at 1315–16](#). The CIT denied the motion, holding that the ITC violated the CIT's rules regarding designating information as confidential and that much of the information the parties requested to redact was not confidential. [Id. at 1317](#).*

*In the In re United States II/OCP case, the CIT ordered the parties to justify certain redactions in remand results filed at the CIT. [OCP, 776 F. Supp. 3d at 1250](#). The CIT noticed potentially improper redactions in the ITC's remand results and held an evidentiary hearing for the parties to justify the redactions. *Id.* The ITC explained that it automatically treats the information it receives in questionnaire responses as confidential. *Id.* The CIT, however, found that practice to be unlawful, explaining that the practice is "inconsistent with statute, regulation, precedent, and common sense." [Id. at 1249](#).*

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## **Practical impact**

*The Federal Circuit's decision, unless reversed by the Supreme Court, will likely prompt changes in the ITC's confidentiality practices. The Federal Circuit expressly held that the "practice of automatically designating all questionnaire responses as confidential is not authorized by the statute." [In re United States II, at \\*10](#).*

*To remedy that error, the ITC may apply its existing regulation, [19 C.F.R. § 201.6](#), to questionnaire responses. That regulation requires the submitter to (1) describe the confidential information, (2) justify why the information is confidential, (3) provide a certificate that the information is not publicly available, and (4) provide a copy of the documents containing the confidential information with the confidential information enclosed in brackets to identify it. [19 C.F.R. 201.6\(b\)\(3\)](#).*

Read the full *Westlaw Today* article [here](#).