

August 11, 2021

The Honorable Gina Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Raimondo:

As Chairman of the Advisory Council on Supply Chain Competitiveness (ACSCC), and on behalf of the ACSCC, I am writing to provide our recommendation that the Department of Commerce eliminate the requirement for transaction-by-transaction based data (electronic export information or EEI data) on shipments between the United States and the territories of Puerto Rico and the Virgin Islands. While we understand and support the requirement to have accurate and complete information for calculating GDP statistics, we are convinced alternative processes for collecting this information are available and would alleviate a process that currently is a barrier to efficient trade and a negative impact on supply chains.

The Commerce Department regulation (15 CFR 30.2(a)(1)(i)(A) and (B)) requiring the EEI information means a shipment from the U.S. mainland to Puerto Rico is treated like an export to a foreign country, which is inappropriate for a location that is a U.S. Commonwealth and part of the U.S. customs area. The requirement imposes a very costly and unnecessary burden on what should be treated as interstate commerce, discourages manufacturers in the fifty U.S. states to ship to Puerto Rico, and impedes economic development on the island. By adding to the cost of every product shipped between the U.S. mainland and Puerto Rico, the EEI requirement is a barrier to economic growth on the island.

U.S. Foreign Trade Regulations concerning EEI filings, authorized by the Secretary of Commerce and administered by the U.S. Census Bureau, are inconsistent. Although required for Puerto Rico, the Foreign Trade Regulations do not require EEI reporting for shipments between the U.S. mainland and Guam or the other Pacific island that are U.S. territories. Puerto Rico is treated as part of the U.S. Customs area under the USMCA and DR-CAFTA. For these reasons, EEI should not be required for a shipment from the U.S. mainland to Puerto Rico. Continued imposition of the EEI filing requirements is incompatible with Puerto Rico's participation in the U.S. Customs area and inconsistent with the application of the Constitution's Commerce Clause to Puerto Rico. Puerto Rico is treated as a U.S. area not only for Customs purposes, but for many other legal and regulatory purposes, such as antitrust laws, transportation regulatory laws like the ICC Termination Act, and the State Department's International Traffic in Arms Regulations (ITAR).

Requiring EEI filings is tantamount to placing a boundary that separates Puerto Rico from the United States to the detriment of the island's economic well-being. The EEI filing requirement adds a cost which increases the price of many goods purchased in Puerto Rico and imposes an unnecessary burden on interstate commerce, restricting the flow of trade within the United States. As a result, some mainland companies, particularly small and medium sized companies without large IT departments and automated information capabilities, simply decide not to ship their merchandise to Puerto Rico. When transporting goods between the mainland and Puerto Rico, shippers must provide additional information that is not typically required for domestic transactions (international vs. domestic waybills). This requires investing in additional IT resources to process, relay and store this information. Further, the costs associated with the filing add to the landed cost of the goods shipped, which are primarily consumer necessities, which ultimately imposes a burden on the people of Puerto Rico who can ill afford it. Like any regulatory requirement, the EEI filing

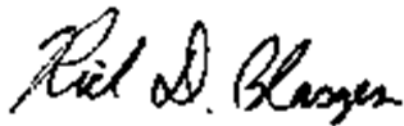
has a cost, one that does not appear to be justified in terms of the actual use of the data. Our companies accrue costs in the millions of dollars annually to submit the data, which we must collect and report for every shipment.

In September 2020 the Census Bureau issued an Advance Notice of Proposed Rulemaking (ANPRM) to collect information from relevant stakeholders about the uses of the Puerto Rico and Virgin Islands EEI data and possible alternative data sources. The responses to the ANPRM clearly show that viable alternatives to the transaction-by-transaction EEI data do exist. The Office of Insular Affairs at the U.S. Department of the Interior said they receive an annual report from the Bureau of Economic Analysis (BEA) that is based on FT-895 reports from the Census Bureau, which incorporate the EEI data. The annual report is used to calculate GDP and other economic statistics for the Virgin Islands. In addition to the Virgin Islands, this office is responsible for Guam, the Marianas and American Samoa. Their input stated they receive BEA reports on these other territories that also are based on Census Bureau FT-895 reports that use “non-EEI-sourced trade data”. These reports on the other territories, which obviously are not based on EEI data, are critical inputs for their requirements and apparently are sufficient for their needs. The Office stated “an annual frequency of FT-895 data could suffice current statistical needs.” This response shows the Government can produce sufficient economic reports for statistical purposes that do not require the EEI data. Further, since all Government users are receiving monthly or annual reports from BEA, at a minimum the data for Puerto Rico and the Virgin Islands does not need to be collected on a transaction-by-transaction basis.

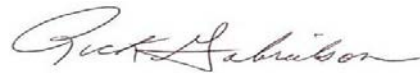
We urge you to take immediate steps to eliminate the costly and unnecessary burden of transmitting EEI data on shipments between the U.S. mainland and Puerto Rico and the Virgin Islands. Over the three years this Committee has been working with BEA and Census officials on this issue, the EEI requirement has been thoroughly vetted and we have heard no compelling reasons for maintaining it. We therefore strongly recommend the regulatory requirement be eliminated. As indicated above, alternative sources of the data are available that can meet any needs identified in Commerce’s ongoing analysis of the issue.

Thank you for your attention to this important issue. We stand ready to answer any questions or provide any additional information you may require moving forward with our recommendations.

Respectfully,



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