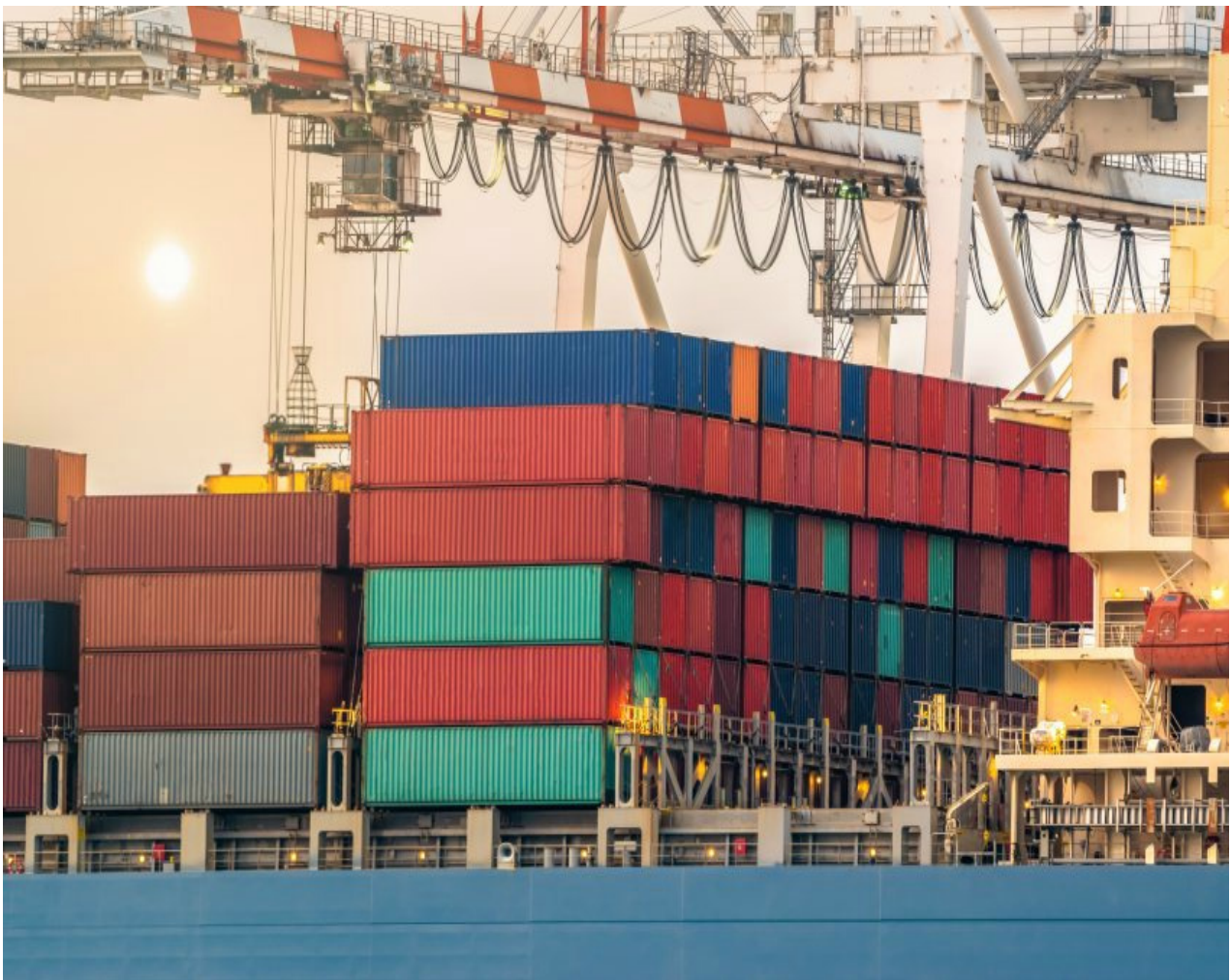


The Virgin Islands Consortium

District Court Orders Halt To Collection Of Excise Tax In U.S. Virgin Islands

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District Court Judge Curtis Gomez on Thursday ordered the Government of the Virgin Islands to cease its collection of excise tax, a judgement that follows the court's September 28, 2018 ruling, which was appealed by the government to the Third Circuit Court of Appeals.

The government had continued its collection of excise taxes following a motion to stay the judgement until the Third Circuit ruled on the matter, but on Thursday that motion was denied -- meaning the government must stop its collection of excise taxes immediately until a ruling from the Third Circuit.

"The motion of the GVI to stay judgment pending appeal docketed at ECF Number[82] is denied," reads the ruling. "The GVI is enjoined from collecting excise taxes in a manner inconsistent with the Court's holding in its September 28, 2018, Judgment; that is, the GVI is enjoined from collecting excise taxes in a manner that violates Commerce Clause principles."

The ruling added: "To the extent it wishes to do so, the GVI may advise the Court if and when it is prepared to collect excise taxes in a manner consistent with the Court's September 28, 2018, Judgment and Memorandum Opinion, at which point the Court may reconsider the injunctive relief ordered herein."

If the ruling stands in the Third Circuit Court of Appeals, the territory — barring a Supreme Court appeal — would have to relinquish for good the excise tax it charges, a source of revenue that represents over \$40 million annually for the local government.

The challenge was first brought by Reefco Services, Inc., a corporation organized in the USVI and engages in the marine refrigeration business, in December 2014. The company installs and provides repair services for refrigeration units, air conditioning units, ice makers, and water makers on boats.

Reefco, which was charged for equipment that it brought into the territory dating back to 2011, contended in its complaint that the taxes violated the Commerce Clause

The complaint included five counts: Count one asserts a claim for an unconstitutional taking; count two asserts that the excise tax violates the Commerce Clause; count three asserts that the excise tax violates the Import/Export Clause; count four asserts a claim for a refund of excise taxes paid; and count five also asserts a claim for an unconstitutional taking.

The District Court in 2015 granted the GVI a motion to dismiss, but only in part, while denying the motion to dismiss relative to counts four and five. In April 2017, however, the court moved to vacate the trial, settling the matter.

But there was reconsideration this year of count two, according to court documents The Consortium has obtained. Count two contends that the excise tax law violates the Commerce Clause of the U.S. Constitution. "The excise tax is facially unconstitutional under the Commerce Clause as the excise tax discriminates against interstate commerce," reads a portion of count two. Citing precedent, the District Court said it was "necessary to reconsider its decision dismissing count two of the amended complaint and revive that count."

According to the September 28 District Court judgement, Reefco was assessed excise taxes in accordance with 33 Virgin Islands Code, Section 42 for items that Reefco imported into the territory. Section 42 was passed by the Virgin Islands Legislature in 1959. The section says ostensibly, the law requires the payment of "an excise tax on all articles, goods, merchandise or commodities manufactured in or brought into the Virgin Islands for personal use" or "any business use or purpose," unless the items are "specially taxed, exempted or excluded."

In 1984, the Virgin Islands amended Section 42 to require the payment of excise taxes on "all articles, goods, merchandise and commodities manufactured in or brought into or

manufactured in the Virgin Islands.” Section 42b outlined the procedure for collection of excise taxes on foreign imports, while 42c outlined the procedure for collection of excise taxes on domestic imports. However, no statutory provision exists outlining the procedures for the collection of excise taxes on locally manufactured goods. Instead, Section 42a directs the director of the Bureau of Internal Revenue to “promulgate rules concerning procedures for the valuation of goods and payment of excise taxes on items manufactured in the Virgin Islands.” According to the District Court, “Significantly, however, such regulations were never promulgated.”

In a separate case cited as precedent in the Sept. 28 proceedings, an appeal to the Third Circuit Court in *JDS Realty Corp. v. Gov’t of Virgin Islands* explained that “[a] cardinal rule of Commerce Clause jurisprudence is that ‘[n]o state, consistent with the Commerce clause, may impose a tax which discriminates against interstate commerce by providing a direct commercial advantage to local business.’”

“By imposing a tax only on imported goods” but not locally manufactured goods, the excise tax did just that, the Third Circuit said in its ruling of the *JDS Realty Corp. v. Gov’t of Virgin Islands* matter.

The District Court’s Sept. 28 ruling noted that the Third Circuit was “hard pressed to imagine a taxing scheme more patently violative of the Commerce Clause than [the excise taxes under Section 42].” Accordingly, the Third Circuit held that, “because the challenged excise tax ha[d] a discriminatory purpose and effect, it violate[d] the commerce clause,” added the District Court.

Depending on the ruling when the new case is heard in the Third Circuit, the repercussions could be significant for the local government, which for years has been struggling with a structural deficit, and is in continuous need of funds to meet its obligations. A diminishing or complete rejection of the excise tax would force the government to look elsewhere to recoup those funds.

See court documents [here](#) and [here](#).