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Maritime

Heavy Lifting: U.S. Coast Guard Confirms Container Verified Gross Mass Requirement Will Not Be Delayed

Action Item: A recent amendment to the International Convention for the Safety of Life at Sea (“SOLAS”) regarding requirements for providing certain cargo information, including weight, prior to loading has caused industry confusion and consternation. As the implementation date is July 1, 2016, stakeholders should work together to develop procedures to meet this implementation date because the U.S. Coast Guard has made it clear that it does not intend to delay implementation.

New Development

In November 2014, the International Maritime Organization (“IMO”) adopted an amendment to SOLAS Regulation VI/2, which addresses cargo information that must be provided by the shipper in writing prior to loading the cargo on the ship, including gross mass. The amendment requires shippers of containers, with limited exceptions, to verify the gross mass of the container and cargo in accordance with specified methods. If the shipper does not provide the verified gross mass, the container may not be loaded on to the ship. The amendment will enter into force on July 1, 2016. This amendment has raised considerable consternation and controversy within the industry with regard to being able to comply with this new amendment by July 1, 2016.

Background

The original SOLAS language required shippers to confirm the gross mass of cargo in writing in appropriate shipping documents prior to loading the cargo on a ship. Problems related to incorrect declarations of container weights, however, have plagued the industry, resulting in improper vessel stowage, delays, damaged or lost containers, damage to equipment and vessels, liability issues, and increased safety risks, among others. The goal of the SOLAS amendment was to supplement the requirement to provide the gross mass of cargo by implementing specified procedures by which container gross mass must be verified. Specifically, the amendment provides for the shipper to verify the gross mass by using one of two approved methods:

1. The packed and sealed container may be weighed using calibrated and certified equipment or, in the alternative;
2. Each package and cargo item loaded into the container, including any pallets or other packing material, may be weighed and added to the tare mass of the container to the sum of the single masses using a certified method approved by the port State’s competent authority in which the packing of the container was completed.

The resulting verified gross mass (“VGM”) must be stated in the shipping document, signed by the shipper, and provided to the master and terminal in advance. If the VGM is not provided to the master and terminal, the container may not be loaded on the ship. The IMO published *Guidelines Regarding the VGM of a Container Carrying Cargo*, [MSC.1/Circ. 1475](#) (June 9, 2014) (“IMO Guidelines”) to assist in the implementation and interpretation of this amendment.

Industry Response to VGM Amendment

Some industry groups have argued vehemently that the VGM requirement is unnecessary, will unduly burden shippers, and cannot be implemented by July 1, 2016. In response to industry concerns, the U.S. Coast Guard, in conjunction with the Federal Maritime Commission (“FMC”), held a listening session on February 18, 2016 to listen and respond to concerns of presenters from the industry.

SHIPPER CONCERNS OPPOSING THE AMENDMENT

Multiple presentations were given by members of the Agriculture Transportation Coalition (“AgTC”). They argued that there is no need for a change because they have been compliant with SOLAS in providing the weight of their cargoes for more than 22 years. They asserted that the amendment puts them at a competitive disadvantage and that it will be difficult, if not impossible, to continue to conduct business as they have been for many years. Noting the critical timeline in the shipment of agricultural products, they stated that the lack of certified scales and lack of standardized procedures for the obtaining and reporting of VGM will disrupt the flow of cargo and have a negative impact on their business.

AgTC members also argued that the amendment unfairly forces the shipper to certify the tare weight of the container, which they do not own. One AgTC member stated that he weighed a sampling of empty containers and found that they did not match the tare weight listed on the container, with one container weight being off by 1,720 pounds. Particularly due to the high rate of error of the listed tare weights, they argue that they should not be liable for weighing the containers and certifying tare weight.

AgTC proposed a number of possible solutions, including: continuing to operate as they have been; requiring the carriers to certify the tare weight of their equipment separately; establishing an allowable VGM variance, as some other countries are in the process of doing; standardizing tare weights for types of equipment for use in calculating VGM; legislative action to

delay implementation until at least 15 trading partner countries implement the amendment, and; delaying enforcement until industry standards are created.

OCEAN CARRIER SUPPORT

A representative from the Ocean Carrier Equipment Management Association (“OCEMA”), a U.S. based association of 18 major ocean common carriers, spoke in support of the amendment. He stated that the amendment will improve safety in the industry and OCEMA is committed to facilitating implementation. OCEMA is developing standardized procedures for its members, which will include recommended best management practices. At the time of the listening session, OCEMA estimated that the procedures would be completed by mid-March. The procedures will favor electronic submission of VGMs, but will provide for other submission methods. OCEMA recommended that the U.S. Coast Guard fast track industry questions on the amendment, confirm that shippers may rely on the tare weight of containers printed on the containers in accordance with the IMO Guidelines, and encourage cooperation within the industry for successful implementation of the amendment.

A representative of the World Shipping Council provided a few clarifications on points of contention raised by earlier presenters. He noted that, contrary to assertions of a few of the presenters, there is nothing in SOLAS that says a VGM cannot be amended if necessary. In fact, the IMO guidelines refer to re-weighing at a later time and use of the new weight as the VGM. He also stated that ocean carriers are not taking the position that the shipper is certifying the tare weight of the container. Rather, the shipper is entitled to rely on the tare weight marked on the container. Finally, he stated that SOLAS applies worldwide and carriers would not be able to allow exceptions in certain locations of the world.

U.S. Coast Guard Position

Rear Admiral Paul Thomas provided the U.S. Coast Guard’s position regarding the amendment. He stated that SOLAS applies to ships in international trade and most ships are foreign flag. The SOLAS amendment is enforced by the vessels’ flag state. Thus, ships cannot load containers without a VGM in accordance with the amendment, even if the United States delayed implementation, because they would not be compliant with their flag state requirements. He explained that delaying implementation or enforcement of the amendment would say to the world that U.S. cargoes are unsafe and ships cannot safely load in the United States. This, he stated, was not an option.

Rear Admiral Thomas also described what “robust enforcement” of the amendment would look like, if the Coast Guard chose to robustly enforce it. He stated that a container at a terminal with no VGM would be declared unsafe and the Coast Guard would put a hold on the container until a VGM is obtained. The Coast Guard would not take action against the shipper because the Coast Guard does not believe it has the authority to take action against a shipper absent a statutory amendment to current U.S. law. The shipper would simply face the business repercussions of the failure and resulting delays. The Coast Guard could also choose to weigh containers that already have a VGM and could find that the VGM previously provided was incorrect. In this situation, the container could be loaded and the new VGM would be used. There still would not be any action against the shipper. Rear Admiral Thomas noted that in terms of enforcement action, SOLAS and the International Safety Management (“ISM”) Code place the ultimate responsibility for the safety of the vessel on the owner of the vessel and the master.

Finally, Rear Admiral Thomas stated that the Coast Guard believes that using best business practices is the most beneficial solution to implementation of the amendment and a formal Coast Guard policy may not be needed. He noted that there presently is not a Coast Guard policy addressing SOLAS Regulation 2 and business practices would provide the most flexibility to the industry. With regard to the proposal of an allowable VGM variance in particular, he noted that an exact allowable variance by regulation would be more restrictive than use of industry practice standards. If, however, the industry believes that a formal Coast Guard policy statement would be beneficial, the Coast Guard will consider formalizing a policy on the issue.

Subsequently, in a posting on the U.S. Coast Guard’s Maritime Commons Blog on February 22, 2016, Rear Admiral Thomas reiterated that U.S. shippers are part of a global supply chain and they work with international business partners around the world to bring their goods to the global market. Specifically, he noted that ships that bring U.S. exports to market are required, by their flag states, to comply with the SOLAS regulations. Thus, even though SOLAS cannot be applied directly to U.S. domestic shippers, the requirements of shippers’ business partners,

which includes SOLAS, can impact shippers. Furthermore, he stated that any delay in the implementation of the amendment in the United States would only affect cargo loaded on U.S. flag ships, which is a small minority of U.S. exports. In addition, if the United States delayed implementation, other nations that are party to SOLAS may declare it a violation for their ships to load containers in the United States, putting U.S. cargo at a significant disadvantage. Lastly, he made it clear that the Coast Guard will continue to vigilantly enforce compliance with SOLAS as both a flag and port state.

Conclusion

It is clear that the Coast Guard has no intention of considering any delay in the implementation of the SOLAS VI/2 amendment, despite the challenges it may pose for the industry, shippers and carriers alike. The Coast Guard also does not at this time intend to promulgate regulations or a formal policy regarding the amendment. Rather, the Coast Guard will leave it to the industry to develop best business practices, at least for the time being. If the industry feels strongly, however, that a formal policy statement would be beneficial, the Coast Guard will consider developing such a policy and work to assist the industry in areas that make practical sense.

Accordingly, we recommend that stakeholders review the amendment and IMO Guidelines closely and work together to develop procedures for implementation by July 1, 2016. Should specific issues arise in the development of these procedures, it would be prudent to keep the Coast Guard informed of these issues and to seek their assistance and guidance as appropriate.

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