



WORLD SHIPPING COUNCIL
PARTNERS IN TRADE

COMMENTS

On

AgTC Position Paper: Safety of Life at Sea (SOLAS) Container Weight Documentation

February 11, 2016

1. **AgTC Statement:** *“This is a dramatic change from current shipping practices. Currently, the shipper is responsible to accurately report the weight of its cargo.”*

Comment: For Customs advance manifest reporting purposes, the shipper must in its shipping instructions to the carrier provide the gross mass of the goods as well as the net mass (excluding any dunnage, securing and bracing material) of the goods.

However, for many years, SOLAS has, separately from the Customs requirements, required the shipper to also provide the accurate weight of the packed container to the carrier.

Specifically, according to existing SOLAS Chapter VI, Regulation 2, paragraph 1, the shipper shall provide the vessel master with cargo information that “shall include [.....] the gross mass of the cargo units”. Similarly, paragraph 3 of the same regulation reads: “Prior to loading the cargo units on board ships, the shipper shall ensure that the gross mass of such units is in accordance with the gross mass declared on the shipping documents” (emphasis added).

It is the lack of enforcement of this requirement and the lack of definition as to what “ensure” actually embodies that help explain the background for the IMO decision to amend SOLAS with the new verified gross mass (hereinafter “VGM”) requirements that become effective on July 1, 2016.

2. **AgTC Statement:** *“The SOLAS committee did not reference any instance where a ship had been damaged or sunk exclusively due to overweight under reported containers.”*

Comment: The IMO’s Maritime Safety Committee (MSC) and one of its sub-committees have for several years considered the issue of misdeclared container weights and the impacts that may arise from incorrectly declared weights. It has never been alleged at the IMO that misdeclared container weights have “exclusively” caused the sinking of a ship. What has been determined by the IMO, supported by extensive joint government-industry research, is that misdeclared container weights may have multiple consequences¹, including the following:

- Risk of personal injury or death to crew and shore side workers
- Ship instability
- Incorrect vessel stowage
- Collapsed container stacks
- Re-handling and re-stowing
- Higher operating costs
- Chassis and ship damage
- Supply chain delay
- Shut-out of accurately declared cargoes
- Road safety problems.

3. **AgTC Statement:** *“There has been no input from the shipping community.” “This rule that was implemented was agreed upon without any outreach or ‘reality check’ with the shipping public.”*

Comment: Many shipper interests were involved in the debate at the IMO. The final regulation was developed with the input of a variety of shippers and shipper organizations in various countries through a variety of channels. The Global Shippers Forum, the National Industrial Transportation League, and other shipper associations were supporters of the final regulation. Method 2 for determining a container’s (VGM) was specifically the result of shipper input into the IMO process.

AgTC was made aware of the development of this IMO Regulation by ocean carrier representatives before the SOLAS VGM requirements were even adopted by the IMO in November 2014. The U.S. trade press also reported extensively on the IMO deliberations. In addition, AgTC was provided with the IMO Guidelines for the

¹ In regard to the structural failure of *MSC Napoli* of the British coast in 2007, mentioned in footnote 1 in the AgTC position paper, the official UK investigation report state the following: "About 660 containers stowed on deck, which had remained dry, were also weighed. The weights of 137 (20%) of these containers were more than 3 tonnes different from their declared weights. The largest difference was 20 tonnes, and the total weight of the 137 containers was 312 tonnes heavier than on the cargo manifest" (Source: "Report on the investigation of the structural failure of *MSC Napoli*", U.K. Marine Accident Investigation Branch, Report 9/208, April 2008, p.28).

implementation of the SOLAS VGM requirements, which were published on June 9, 2014 -- two years in advance of the July 1, 2016 entry into force of the requirements.

4. **AgTC Statement:** *“The rule imposes on shipper liability to certify equipment which is owned/leased/controlled by the carrier” and “[ocean carriers] would make US exporters certify the weight of a container, taking responsibility for its accuracy.”*

Comment: The tare weight of a container is not a relevant matter if the shipper chooses Method 1 (in which the packed contained is weighed) to determine the container’s VGM. If a shipper chooses to use Method 2, the tare weight is painted onto the door end of every container -- the same door end where the seal will be affixed to the container upon completion of the container packing process (see picture below).

This means that the tare weight is always readily available to the shipper or the person who, by contractual arrangement and on behalf of the shipper, packs the container and obtains the VGM. Knowledge of, and access to, the tare weight is thus not an issue.



AgTC states that the actual container weight may vary from the weight stated on the container. To the extent this might be true, the shipper is not responsible for “certifying” that the tare weight painted on the container is accurate. Nor does the shipper become responsible for the accuracy of the tare weight as indicated on the door end of the container. This is and remains the responsibility of the container operator.

The IMO Guidelines for the implementation of the SOLAS VGM requirements provide, for shippers choosing to use Method 2 to determine the VGM, that: *“The shipper (or, by arrangement of the shipper, a third party), may weigh all packages and cargo items, including the mass of pallets, dunnage and other packing and securing material to be packed in the container, and add the tare mass of the container to the sum of the single*

masses.” The IMO Guidelines also provide that “the tare weight will visually appear on the container in accordance with [the ISO] standard for container marking and identification and should be used.”

As mentioned earlier, Method 2 for determining a container’s VGM was the result of shipper input into the IMO process. No government has at the IMO at any time indicated any intent to require a shipper to verify the tare weight stated on the container provided by the ocean carrier.

5. **AgTC Statement:** *AgTC states that (unnamed) governments will not enforce the rule and “thus their exporters will not be encumbered and their exports will not be disrupted by this rule” causing “significant competitive disadvantages to US exporters”.*

Comment: The new SOLAS VGM requirements establish a prohibition on both vessel operators and terminal operators from loading a packed container for export without a VGM. Masters, vessel operators and terminal operators (as well as their insurers) can be assumed to understand their legal obligations under SOLAS, which is applicable global law, regardless of what advance enforcement guidance a government may or may not issue. To infer that there will be wanton disregard for the law by vessel and terminal operators in the rest of the world is without basis.

6. **AgTC Statement:** *“Does not account for container or weight variance.”*

Comment: Some cargo products may incur normal, minor changes in weight from the time of packing until delivery (e.g., due to evaporation, humidity changes, ice melt from fresh food products packed in ice, etc.) and some containers’ tare weight may change over time and vary somewhat from the tare weight painted on the container. However, these variations should not present safety concerns -- something that was clearly understood and agreed by the IMO.

It is important to distinguish between “accuracy” and “tolerance” (or “accepted variance percentage”). These terms do not mean the same and should not be used interchangeably:

Accuracy refers to the precision with which a measurement (in this case mass) is made. Weights obtained by using either Method 1 or Method 2 are to be as accurate as the scales or weighing devices used. Such scales and devices must be certified and calibrated in accordance with the applicable accuracy standards and requirements of the State (i.e. country) in which the equipment is being used. Those standards and requirements will determine the acceptable level of accuracy of the weighing equipment used.

There is no provision in the SOLAS VGM requirements for any margin of error, tolerance or “accepted variance percentage.” SOLAS embodies a physical weighing requirement,

not a system of estimation. However, enforcement agencies may exercise discretion or tolerance in deciding when to initiate further investigations or penalty action. However, if a shipper is merely estimating the gross mass and hoping to fall within any government enforcement tolerances, it would be violating the SOLAS requirements. There are no exemptions from the requirement to weigh using either Method 1 or Method 2.

- 7. AgTC Statement:** *“The unique US supply chain means that the SOLAS documentation requirements will disrupt the flow of cargo through the ports.”*

Comment: The U.S. export supply chain is not as unique as the AgTC statement makes it appear. Other countries and/or supply chains also have time sensitive, “just in time” shipments, making one uniform, let alone global, cut-off time for when the VGM must be provided by the shipper to the carrier and the terminal operator unworkable. This is exactly why the IMO Guidelines state: “There is no SOLAS prescribed time deadline for the shipper's submission of the verified gross mass other than such information is to be received in time to be used by the master and the terminal representative in the ship stowage plan. The finalization of the ship stowage plan will depend on ship type and size, local port loading procedures, trade lane and other operational factors. It is the responsibility of the shipping company with whom the shipper enters into a contract of carriage to inform the shipper, following prior discussions with the port terminal, of any specific time deadline for submitting the information.”

AgTC has been made aware of this and of the attendant encouragement to U.S. agricultural shippers to engage with their carriers to identify cut-offs that are reflective of the time constraints of the supply chains while at the same time meeting the overriding safety objective of the SOLAS VGM requirements -- to ensure that the VGM can be used in the ship stowage plan. No authoritative request has been made at the IMO or elsewhere that the cut-off for the provision of the VGM to the carrier should be identical to the documentary cut-off for advance cargo risk assessment purposes (“24 hour rules”).

- 8. AgTC Statement:** *“Steamship lines and terminal operators still have not provided shippers with consistent deadlines for this new documentation, which will be submitted via electronic data interchange (EDI), likely as part of the Shippers Instructions (SI). The EDI providers have not yet determined a uniform manner in which to include this data point in their software systems. Steamship lines and terminals are also proposing their own ways in which to submit VGM.”*

Comment: It is not surprising that ocean carriers may have different deadlines (cut-offs) for when they must receive the VGM, as this is a commercial matter. Further, ocean carriers must deal with multiple marine terminal operators, and different terminal operators appear to be taking different approaches to what they will require in the

event that a shipper has not provided the carrier with a VGM before the packed container arrives at a marine terminal. Carriers may need to tailor different deadlines for containers received at different marine terminals to address differences at ports.

Further, how carriers and terminals, or service providers like INTTRA, CargoSmart, or GT Nexus, structure their EDI is a commercial matter for those parties, not for government regulation. Further, not all shippers use EDI to connect with their ocean carriers. Industry efforts have been and are underway on these issues, but they require care and counsel. Uniformity with respect to commercial deadline decisions or EDI matters is not required or expected by the SOLAS VGM requirements, nor is it essential for the Regulation to be implemented. What shippers will need is sufficient advance information from their carriers about these issues, which the carriers are working on.

9. ***AqTC statement:*** *“Cost of implementation imposes new costs on all participants in US export supply chains.”*

Comment: There is no denying that obtaining an accurate weight of the packed container is associated with a cost because doing so requires that weighing actually be done. However, the requirement to provide an accurate weight for the packed container is not new – it is an existing requirement under SOLAS. Thus, it cannot reasonably be argued that the SOLAS VGM requirements introduce a new cost for weighing; it is a cost that already should have been built into the supply chain. If this cost is not built in because estimation, not weighing, is currently being used to provide the weight of the packed container to the carrier, then this confirms that the current SOLAS requirements have not been effective and need to be complemented with the SOLAS weight verification requirement, which is exactly what the IMO concluded in 2014 after its multi-year consideration and analysis of the impact and consequences of misdeclared container weights.

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