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

TABLE OF CONTENTS:

EXECUTIVE SUMMARY --- p. 1-3

- o The Container Weight Documentation and US Exporters --- p. 2
- o Concerns --- p. 2
- o Options --- p. 2-3

AgTC POSITION PAPER ON SOLAS CONTAINER WEIGHT DOCUMENTATION RULE --- p. 3

A. Who Cares? How the Rule Works --- p. 3

1. Impact on US Exporters --- p. 3-4
2. What are the SOLAS Container Weight Requirements? --- p. 4
3. Enforcement and Compliance of SOLAS Container Weight Documentation --- p. 5

B. Key Concerns --- p. 5-7

1. Causes Significant Competitive Disadvantage to US Exporters --- p. 5
2. Imposes Shipper Liability to Certify Carrier Owned/Leased Equipment --- p. 5
3. Tare Weights Printed on the Back of the Container Typically not Accurate --- p. 5
4. Does not Account for Container or Weight Variance --- p. 6
5. The Unique US Supply Chain Means that the SOLAS Documentation Requirements Will Disrupt the Flow of Cargo Through the Ports --- p. 6-7
6. No Means Currently Exist to Facilitate Essential Verified Gross Mass (VGM) Data --- p. 7
7. Cost of Implementation Imposes New Costs on All Participants in US Export Supply Chain --- p. 7

C. Proposed Options --- p. 7-8

D. Conclusion --- p. 8

EXECUTIVE SUMMARY

On July 1, 2016 an amendment to the International Maritime Organization's Safety of Life at Sea (SOLAS) convention will go into effect requiring all shippers (importers and exporters) to certify and submit the Verified Gross Mass (VGM) – the combined weight of the cargo and the container – to the steamship line and terminal operator in advance of loading the container aboard a vessel.

This is a dramatic change from current shipping practices. Currently, the shipper is responsible to accurately report the weight of its cargo. The shipper does not own, control, or maintain the containers which are owned/leased by the carriers.

The amendment was created as a response to claims that there have been incidents of damage caused by overweight containers, although the International Maritime Organization's SOLAS committee did not reference any instance where a ship had been damaged or sunk exclusively due to overweight under reported containers.¹ Now shippers, steamship lines, terminal operators, and governments are scrambling to create best practices and implementation guidance for this new rule.

AgTC members constitute the majority of US agriculture and forest products exporters and thus the majority of US ocean exports. We believe that unless thoughtfully considered, by individuals with intimate familiarity with the export supply chain process, this rule will create major turmoil at the marine terminals and a very significant impediment to US exports. This rule was never submitted to Congress, no committee or subcommittee of Congress ever reviewed it. It was not reviewed or approved by a Federal agency, nor published in the Federal Register. There has been no input from the shipping community.

Concerns of US agriculture and forest products exporters on the implementation of the SOLAS Container Weight Documentation Amendment are as follows (detailed on pages 5-7):

1. Causes significant competitive disadvantage to US exporters
2. Shipper knows weight of cargo. Shipper does not know container weight. The rule imposes on shipper liability to certify equipment which is owned/leased/controlled by the carrier.
3. Tare Weights printed on the back of the container typically not accurate
4. Does not account for container or weight variance
5. The unique US supply chain means that the SOLAS documentation requirements will disrupt the flow of cargo through the ports
6. No means currently exist to facilitate transmission of essential Verified Gross Mass (VGM) data
7. Cost of implementation imposes significant new costs on all participants in US export supply chain

Options recommended to protect US exporter competitiveness, while meeting the intent of the rule (detailed on pages 7-8):

¹ In the instance cited by the World Shipping Council, MSC Napoli—the reports were inconclusive as to the cause

1. Federal Maritime Commission and Coast Guard to convene Working Group of all stakeholders.
2. Exporter shall only be responsible for certifying and submitting the weight of the cargo it puts into the supply chain. Steamship lines shall be responsible for submitting the weight of their containers.
3. Weight variance of +/- 5% (per the UK model) to be included for cargo weight, recognizing natural changes typical for agriculture and forest products during transit.
4. A list of accepted container weights shall be published, which the shipper can add to the cargo weight for the certification required by this rule. (For example, a 20 foot dry container would be assigned a weight, a 40 foot refrigerated container would be assigned a weight, and so on, to cover all typical container sizes.)
5. The US shall not implement this rule until the top 15 trading partners, as measured by ocean container volumes, of the United States have implemented it.
6. Coast Guard shall provide a means to receive public comment, and delay enforcement until such input is collected, all stakeholders agree on best practices for VGM implementation, and the Coast Guard is satisfied that US commerce will not be detrimentally impacted.
7. Congressional inquiry into the International Maritime Organization process, the means by which the United States can be bound, and how this rule was adopted without US exporter or importer notice or input, or consideration of impact on US economy.

AgTC POSITION PAPER ON SOLAS CONTAINER WEIGHT DOCUMENTATION RULE

A. Who cares? How the Rule works

1. Impact on US Exporters

The Agriculture Transportation Coalition (AgTC) is regularly cited as "the principal voice of agricultural exporters in US transportation policy." The AgTC's membership includes companies that represent virtually all agriculture products and many forest products exported from the United States, as well as many which are imported. These products are grown, raised, processed, packaged and shipped from all regions of the US, to all markets worldwide, where they face significant competition from similar products sourced elsewhere.

The principle which guided the founding of the AgTC in 1987 is:

"There is nothing that we produce in this country in agriculture and forest products, that cannot be sourced somewhere else in the world. We can grow the best in the world, but if we can't deliver affordably and dependably, the customer will go somewhere else... and may never come back."

Sadly, there are too many examples of both temporary and permanently lost foreign markets for US exporters which have resulted from delay, disruption, and congestion at US ports during labor negotiations. Such disruption is likely again under this SOLAS rule without careful implementation consistent with physical and documentary processes.

2. What are the SOLAS Container Weight Requirements?

On July 1, 2016 an amendment to the International Maritime Organization's Safety of Life at Sea (SOLAS) convention will go into effect requiring all shippers (importers and exporters) to certify and submit the Verified Gross Mass (VGM) – the combined weight of the cargo and the container – to the steamship line and terminal operator in advance of loading the container aboard a vessel.

This is a dramatic change from current shipping practices. Currently, the shipper is responsible to accurately report the weight of its cargo. The shipper does not own, control, or maintain the containers which are owned/leased by the carriers.

The amendment was created as a response to claims that there have been incidents of damage caused by overweight containers, although the SOLAS committee did not reference any instance where a ship had been damaged or sunk exclusively due to overweight under reported containers.² Now shippers, steamship lines, terminal operators, and governments are scrambling to create best practices and implementation guidance for this new rule.

Specific Provisions of the Rule:

- Before a packed container can be loaded onto a ship, the shipper must weigh the packed container (Method 1) or weigh all the cargo and contents of the container and add those weights to the container's tare weight [tare weight is the weight of the container itself, without cargo. Tare weight is stenciled on the back of each container] (Method 2). This constitutes the Verified Gross Mass (VGM).
- A carrier may not load a container onto a ship unless the vessel master and the terminal representative have obtained, in advance of vessel loading, a signed verification of the gross weight of the container.
- A carrier may rely on a shipper's signed weight verification to be accurate and is not required to verify that the shipper has used an approved method to determine the verified weight.
- Verified container weights are to be used by the terminal operator and the vessel operator in ship stowage planning.

² In the instance cited by the World Shipping Council, MSC Napoli—the reports were inconclusive as to the cause

3. Enforcement and Compliance of SOLAS Container Weight Documentation:

Each country is responsible for its own enforcement. In the United States, the Coast Guard is tasked with managing compliance. Based on our discussions with them, they will not issue a set of regulations, but rather a policy guidance. The Coast Guard has jurisdiction over the terminal operators and steamship lines, but not the shipper. The Coast Guard has stated that it wishes to prevent major violations of severely overweight containers. The Coast Guard is not aware of a problem with overweight containers in the US export trades and recognized that this rule could impose new burdens on all shippers and disruption in the supply chain as a whole. It is not at all clear that all countries will enforce this rule.

B. Key Concerns of US Agriculture Exporters on SOLAS Container Weight Documentation:

1. Causes significant competitive disadvantage to US exporters

US agriculture and forest products compete with overseas sources in Brazil, Central America, and Russia, for example. Many have not issued any enforcement guidance, and thus their exporters will not be encumbered and their exports will not be disrupted by this rule!

2. Imposes shipper liability to certify carrier owned/leased equipment:

Virtually all containers are owned, leased, or maintained by the ocean carriers. *Yet under this rule, the ocean carriers would have no responsibility for the timely electronic submission to the terminal of the weight of their own equipment.* Rather, they would make US exporters certify the weight of a container, taking responsibility for its accuracy. US companies are not willing to take on the liabilities of certifying the accurate weight of equipment that they do not own or control and should not be required to. An AgTC member, one of the largest US exporters states: “Our legal department won’t allow us to certify the weight of assets we have no ownership or lease responsibilities for.”

3. Tare Weights printed on the back of the container typically not accurate:

An AgTC member stated: “We know from random weighing of containers and chassis for a major Trans-Pacific ocean carrier that there is a difference between the posted weights on the assets and the actual tare of the equipment.” Another member encountered the same problem: “We had a customer that ran the container over a scale and subtracted the tare listed on the container, expecting to find the net cargo amount exactly as invoiced – and didn’t find that result, and claimed us for the difference for 50 containers. So we started doing some research and found in two different tests that the containers actually do not weigh the printed tare. We had an independent third-party to verify and certify this.”

Therefore, the only real control a shipper has is over the cargo it is exporting. It is reasonable to require the shipper to know the weight of its own cargo; similarly it should be the steamship lines' responsibility to certify the accurate weights of their containers.

4. Does not account for container or weight variance:

Weight variance for agriculture and forest products cargo and containers is due to a variety of cases, for examples:

- Moisture and Humidity Conditions: Refrigerated containers can absorb moisture of hundreds of pounds of water over time in the container wall insulation making the actual manufacturer weight posted on the container an estimate at best.
- Age of Equipment: Equipment is repaired by adding steel enforcements, etc which can alter the weight of the container. The tare weight printed on the side is not updated to reflect these changes.
- Scale Calibration: Each state certifies and calibrates their respective scales. There is no national standard. Some scales weight not only the container, but the chassis, truck tractor, and driver. Truck tractors, driver weight, and fuel levels do vary quite a bit and would impact overall weight.

The weight of the loaded container will vary depending on a number of outside factors. We request that the Coast Guard issue an accepted variance percentage, which would also be observed by the steamship lines and terminal operators.

The UK Coast Guard released guidance which included a weight variation tolerance of +/- 5% of the loaded container weight. Japan authorities have indicated a weight variation tolerance of between +/- 2 and 5%. Thus far, the US Coast Guard has not indicated if they will follow suit.

5. The unique US supply chain means that the SOLAS documentation requirements will disrupt the flow of cargo through the ports:

The US export supply chain is unique in the world due to the long distances (often hundreds of miles) which cargo travels before it is transloaded from one mode of transport into a container at or near the port for immediate delivery to the terminals.

For the agriculture and forest products industry, particularly for perishables, every additional hour the product remains in the container is costly. The industry works hard to streamline the supply chain, to transload cargo into containers near the ports, and to minimize time product spends in transit. The US shipping community cannot afford to have the "no documentation/no load" on vessel documentation cutoffs pushed back further to accommodate this new regulation.

There is extreme concern about the flow of information. For example: The exporter puts soy beans, specialty grains, or meat from an inland point such as the US Midwest, on a truck or rail car to the coast. There it is then transloaded into an ocean container and within hours and sometimes minutes transited directly into a marine terminal. How is that exporter in the Midwest

to know which ocean container was used in the transload process, and the weight of the container, into which his export products are to be loaded, sometimes weeks after they depart that Midwest origin? Even if someone is to communicate to him the container number and the stenciled weight on the side of the container, how is that person in the Midwest going to electronically communicate that to the ocean carrier, and then the ocean carrier to the marine terminal operator, so that that information is available to the longshoremen operating the marine terminal gate by the time that container is being brought through the gate?

6. No means currently exist to facilitate transmission of essential Verified Gross Mass (VGM) data:

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.

7. Cost of implementation imposes new costs on all participants in US export supply chain:

Adding Verified Gross Mass (VGM) into an EDI program like on the Shipper's Instructions is a new field requiring programming and added cost to the shipper.

In addition for those shippers that must weigh their cargo using Method 1, a cost will be had for scaling goods. One major US reefer shipper states: "The cost of attempting to weigh every container at the port would add a minimum of \$200-\$250 /Container. Annually that would cost our company \$4.7 – 5.7 MM."

Truck driver wait time in this process could result in additional cost.

The cost of congestion and missed sailings translate into lost sales for our shippers and billions of dollars lost to the US export community.

Adding cost to all shippers when the dollar is so strong makes our exports less competitive in the global market. This hurts the small to medium exporters most if they do not have the facilities to scale and/or automate.

C. Proposed Options

To address the above concerns, AgTC members propose implementing some combination of the following options.

Option 1: Federal Maritime Commission (FMC) and Coast Guard to convene a working group of all stakeholders to develop a means of compliance consistent with the intent of the rule in a manner which will not disrupt or disadvantage US export commerce.

Option 2: Exporter shall be responsible for certifying accurate weight of their cargo, the carrier will submit the weight of the container it owns/leases.

Option 3: A +/- 5% weight variance (per the UK model) will be allowed for the weight of the cargo to account for changes due to moisture and humidity content in agriculture and forest products as the container travels through the supply chain.

Option 4: Coast Guard (or other agency) shall issue a list of assigned standard container weights which the shipper would add to cargo weight for the certification required by this rule. (For example, a 20 foot dry container would be assigned a weight, a 40 foot refrigerated container would be assigned a weight, and so on, to cover all typical container sizes.)

Option 5: To prevent competitive disadvantage, this rule should not be implemented in the United States until after its implementation by the United States' top 15 trading partner countries.

Option 6: Coast Guard shall provide a means to receive public comment, and delay enforcement until such input is collected, all stakeholders agree on best practices for VGM implementation, and the Coast Guard is satisfied that US commerce will not be detrimentally impacted.

D. Conclusion

The Agriculture Transportation Coalition, on behalf of the largest segment of United States exports, appreciates the interest and concern demonstrated by the United States Coast Guard, United States Senate Committee on Commerce, Science of Transportation, and the Federal Maritime Commission regarding the SOLAS container weight documentation rule.

This rule that was implemented was agreed upon without any outreach or "reality check" with the shipping public, specifically with the US exporters who are now being burdened with certifying to the ocean carriers the weight of the carriers' very own equipment (containers)! It does appear that at least some segment of German exporters were afforded the opportunity to weigh in to the Committee as it developed this Rule, but US shippers were not. Representation of the United States exporters at the International Maritime Organization is a matter which should be addressed going forward.

We believe this situation, and the need to avoid similar circumstances in the future, warrants a Congressional inquiry into the International Maritime Organization process, the means by which the United States can be bound, and how this rule was adopted without US exporter or importer notice or input, or consideration of impact on US economy.

In the meantime, all Federal agencies, as well as the ocean carriers, marine terminals, freight forwarders, NVOCC's and exporters, must work together to develop a means of implementation that will not create the sort of congestion at United States ports and marine terminals that we

suffered only two years ago, and can ill afford to repeat. The AgTC stands ready to work with all stakeholders towards such a solution.