



## A PATCHY IMPLEMENTATION: A GLOBAL PERSPECTIVE

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**With less than seventy five days left (at the time of writing) before the SOLAS amendments become effective on July 1, 2016, it is taking competent authorities a lot longer than anticipated to come forward with guidance on implementation, enforcement and tolerances.**

It is expected that many Competent Authorities will be publishing their requirements shortly for implementation and enforcement in their jurisdictions, leaving very little time for the industry to act on these and be ready for July 1. It is clear that different approaches and timetables are being followed in different jurisdictions. This has been clearly reflected when we canvassed some of our other offices which have also been actively working in this area with clients such as terminals, carriers, forwarders, shippers and others in the container supply chain.

### **United Kingdom**

Whilst lots of contracting states are clearly working on it, the Maritime & Coastguard Agency (MCA) in the UK is one of the few which has

confirmed its requirements and is leading the way by working with European partners to try and provide a harmonised approach. The MCA recently updated its webpage with further details on its approach.

Guidance has been given on what the MCA will expect from those using both Method 1 and Method 2, particularly in terms of record keeping. The UK enforcement tolerance has also been refined is now as  $\pm 5\%$  or  $\pm 500\text{kg}$  whichever is greater. Lower tolerances have been set for modified lifting equipment to be used to establish verified gross mass (VGM). The Method 2 application process has been formally launched with effect from April 6 and details of application methods and fees clarified. The MCA has undertaken to process all applications received before June 15 in time for the July 1 implementation. The MCA is working on a set of UK specific responses to Industry FAQs – published in December, 2015 – and the bodies behind that publication are also working towards a revised international version.



## People's Republic Of China

The Ministry of Transport (MOT) of the People's Republic of China is the authority responsible for implementing the SOLAS requirement in China. The MOT gave the Maritime Safety Administration of Shenzhen (MSA Shenzhen or MSA) the task of carrying out the trials and to make recommendations to the MOT. The trials cover the busiest container ports on the Chinese mainland (Ningbo, Qingdao, Shanghai and Shenzhen Yantian) and started in early 2015, concluding in February, 2016.

MSA Shenzhen submitted their detailed report as to their findings, together with their recommendations, to the MOT for approval. On April 6, 2016, the MOT published their Notice on Implementation of the Amended Convention (the Notice) and Recommended Guidelines on Weight Verification of Loaded Containers by Accumulative Calculation Method (the draft Guidelines) on their website for comments. Written comments were to be sent by email to the MOT by 15 April 2016. The MOT will now review the comments and issue the formal guidelines shortly.

The Notice introduced some amendments to SOLAS and set out requirements for shippers, ship owners, carriers and wharf operators. The MSA will carry out random inspections on loaded containers carried by vessels. A vessel will not be permitted to sail if it is found that no VGM is obtained until the error is rectified and any potential risk of safety is eliminated. Under the draft Guidelines, a shipper adopting Method 2 shall establish an internal control system to ensure that the maximum allowable error between shipper's VGM, and that obtained by MSA/

ship owner/carrier/terminal operator, is  $\pm 5\%$  or 1 tonne (whichever is less). Furthermore, the draft Guidelines do not require extra approval to be obtained by shippers using Method 2, unlike in neighbouring Hong Kong SAR.

## Hong Kong

The Marine Department (MD) is the competent authority that will regulate container mass verification in Hong Kong. MD intends to amend subsidiary legislation and has already published two guidelines:

- Merchant Shipping (Safety) (Carriage of Cargoes) Regulation (Cap 369 VA) (Regulation) to be amended
- Guidelines on the Verification of Gross Mass of a Container with Cargo Packed in Hong Kong
- Guidelines specific to Method 2 under which shippers must have their procedure approved and are given a registration number by MD<sup>1</sup>.

The MD will hold briefing sessions on April 27, 2016 and will then hold a trial run (to end May) involving shippers registering with the MD, calculating weights using Method 2, submitting these to participating shipping lines and then to terminals. After the trial run (likely end May), the MD intends to submit the draft Regulation to the Legislative Council. The MD is close to finalising arrangements. No further consultation is envisaged. However, the Hong Kong Shipper's Council is concerned that the MD's current proposals exceed those of other authorities and put Hong Kong shippers at a disadvantage (e.g. the requirements of Method 2 require training and registration).

## Australia

The Australian Maritime Safety Authority (AMSA) has recently published a consultation draft of its proposed Marine Order 42, which will be the legislative instrument incorporating the new SOLAS provisions relating to the requirements for declaration of the VGM of containers.

The consultation draft of Marine Order 42 gives force to the SOLAS requirements for weighing containers in accordance with Method 1 and prescribes certain accuracy standards for weighing equipment for Method 2.

Some of the Method 2 options include 'on-board' automatic weighing on a vehicle and 'weighing in motion' systems on vehicles and trains provided those instruments and systems comply with the prescribed accuracy standards set by the International Organisation of Legal Metrology and the Australian National Measurement Institute.

The consultation draft proposes to impose a civil penalty (on a strict liability basis) on shippers to ensure the VGM is correctly stated in the shipping documents. Shipowners and terminal operators amongst others will have to be vigilant, however, as the consultation draft also imposes a civil penalty (again on a strict liability basis) on any person who loads a container onto the vessel if the relevant shipping document does not state the container's VGM. AMSA is still considering options for enforcement of the SOLAS regime and it is unclear at this stage as to whether a system of spot checks or some other mechanism will be used for compliance purposes.

1 [http://www.mardep.gov.hk/en/pub\\_services/ocean/miss\\_vgm.html](http://www.mardep.gov.hk/en/pub_services/ocean/miss_vgm.html)



## France

The draft amendment to the French order no: 66-1078 on contracts for the transport of goods by sea, which was expected in its final form within April, provides some guidance on the French position.

First, under Method 2, the container weight to be declared will be the sum of the tare weight of the container, the weight of the goods transported in that container, their packaging, any pallets as well as any fixing, partitioning or other materials used in the container.

The container weight is to be declared, under either method, at the latest when the container reaches the loading port terminal. The enforcement tolerance limit in France is likely to be  $\pm 5\%$ . As regards to the scope of the definition of a “shipper” in France, this is limited to the shipper as named on the relevant bill of lading.

As it stands, there will be no official sanctions for non-compliance with the new SOLAS regulation, but the shipper may be exposed to dead-freight and/or demurrage should the carrier refuse to load the container(s).

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