

WHY ARE WE WEIGHTING? TIME TO ACT



The implications of the verification of the gross mass of containers — a relatively modest change to the International Maritime Organization (IMO) Safety of Life at Sea Convention (SOLAS) that in essence reiterates the existing responsibility of shippers to declare gross mass accurately — are reverberating through the container supply chain.

The IMO has amended SOLAS to require, as a condition for loading a packed container onto a ship for export, that the container has a verified gross mass (VGM). The shipper (as named on the ocean bill of lading) is responsible for obtaining the VGM of the packed container and communicating it to the ocean carrier and the terminal operator. This requirement will become mandatory on 1 July 2016 and will apply globally. After that date, it will be a violation of SOLAS to load a packed container onto a ship if the ocean carrier and terminal operator do not have a VGM.

Recognising the pivotal nature of the port interface, container terminals have been drawn into the implementation of the new regulation as recipients of information for ship stowage planning and, critically, they now have a joint

responsibility not to load a container on board a ship if the VGM is not available. There has been considerable debate as to whether container terminals need to position themselves to be able to weigh containers, not least because of the cost of creating appropriate infrastructure, and amending systems and procedures, with an uncertain return on investment. Some carriers and forwarders are also considering whether they wish to offer container weighing as a commercial service to their customers.

Some of the main requirements of the new regulations for ocean carriers and terminal operators are:

1. Ship stowage plans should use VGMs for all packed containers loaded on board.
2. A terminal operator may rely on a shipper's signed weight verification to be accurate. The terminal operator is not obliged to check the shipper's VGM. However, if the terminal operator establishes a VGM which differs from that declared by the shipper, the terminal operator's VGM should prevail.



3. If a packed container does not have a VGM when presented at a container terminal:
 - (a) Handling processes need to be agreed between the ocean carrier and the terminal operator. These will also be important for road hauliers which need to understand the consequences of arriving at a container terminal without a VGM.
 - (b) It may not be loaded on board a ship unless and until the VGM has been obtained and used in the stowage plan.

There are a number of key issues for ocean carriers and terminal operators to consider, including:

1. Reviewing the adequacy of existing terminal service agreements, haulage agreements and standard terms of business for terminals. Existing carrier bills of lading terms are unlikely to require revision.
2. Establishing which body is the Competent Authority in the jurisdiction of the export terminals and how these intend to implement the amended regulations.
3. Preparing and agreeing appropriate systems and procedures to address:
 - (a) Containers arriving without a VGM, including a consistent gate policy.
 - (b) Changes in VGM between booking and loading; and
 - (c) Preventing containers being loaded without a VGM.
4. Establishing and communicating deadlines for receipt of VGMs for export containers.

5. Establishing a system of record keeping for misdeclarations, discrepancies and corrections.
6. Considering providing a commercial weighing service, assessing the available technologies, practical implementation and the commercial and legal terms and conditions to govern this.
7. What happens if the terminal operator establishes the VGM for those containers without one in order to allow the container to be loaded onboard the ship – who agrees and pays?
8. Reinforcing awareness amongst ocean carriers and their customers of existing free time and demurrage policies.

The position for shippers and freight forwarders is to establish the identity of the “Competent Authority” in their jurisdiction and how they intend implementing the SOLAS amendments. In the UK, this is the Maritime and Coastguard Agency (MCA) which has helpfully produced a guidance note (MGN 534 (M+F)). Shippers and forwarders need to consider how they will comply with their obligations – whether by weighing the packed container (Method 1) or by calculating the aggregate weight of the empty container (its tare weight) and weighing its contents (Method 2). If the shipper intends to use Method 2, the UK regime will require them to obtain accreditation from the MCA.

It will be important for shippers and forwarders to have dialogue between each other when working together and also for forwarders to have dialogue between themselves where they consolidate and co-load LCL shipments together into FCL shipments. It is hoped that ocean

carriers will take a pro-active approach towards implementation in each jurisdiction in which they operate and be able to guide their customers accordingly. Carriers will need to communicate any revisions to cut-off times and highlight the consequences of failing to comply with the new SOLAS requirements. This is probably an opportune time for forwarders, particularly when acting as NVOCCs, to review their agreements, standard terms of business and house bills of lading to ensure they contain adequate protections you would ordinarily expect in cases of claims from either shippers or carriers.

Ocean carriers may wish to consider providing an online database of tare weights for their container fleets to assist those shippers using Method 2. Similarly road hauliers may wish to consider checking the accuracy of any internal databases containing the tare weights for their fleets of tractor and trailer units to assist those shippers using Method 1. Some road hauliers with weighbridge facilities at their depots may also consider whether they wish to offer container weighing as a commercial service to either shippers under merchant haulage or ocean carriers under carrier haulage. Alternatively, road hauliers may wish to investigate the network of available weighing facilities which offer a minimum deviation from the main routes to export port terminals. Importantly, any weighbridges used must be certified and calibrated in accordance with applicable national standards to provide compliant VGMs for the purposes of SOLAS.

The UK has taken a very proactive role in looking at the implementation of the SOLAS amendments. However, in short, there is much which probably still needs to be done and increasingly



It will be important for shippers and forwarders to have dialogue between each other when working together and also for forwarders to have dialogue between themselves where they consolidate and co-load LCL shipments together into FCL shipments.

MATTHEW GORE, SENIOR ASSOCIATE

little time in which these needs are to be achieved. Whilst the challenges are not insurmountable, many remain to be resolved and only through concerted efforts between participants in the container supply chain is this likely to be achieved by 1 July 2016.

Related events

Join the debate

In the UK, HFW are proud to be hosting a practical evening seminar on Wednesday 3 February 2016 organised by the Chartered Institute of Logistics & Transport which will bring interested parties together to discuss how these new IMO regulations on container weighing can be implemented with minimum disruption to the container supply chain. Further details of the event can be found at: www.hfw.com/events. Matthew Gore is also due to speak on this topic at the ICHCA International Conference 2016 in Barcelona on Wednesday 2 March 2016: <https://www.eiseverywhere.com/ehome/ichcaconference/programme/>.



For more information, please contact the author of this briefing:

Matthew Gore

Senior Associate, London

T: +44 (0)20 7264 8259

E: matthew.gore@hfw.com

Research conducted by Craig Grant, Trainee Solicitor.

HFW has approximately 500 lawyers working in offices across Australia, Asia, the Middle East, Europe and South America. For further information about container shipping issues in other jurisdictions, please contact:

Craig Neame

Partner, London

T: +44 (0)20 7264 8338

E: craig.neame@hfw.com

Guillaume Brajeux

Partner, Paris

T: +33 1 44 94 40 50

E: guillaume.brajeux@hfw.com

E: craig.neame@hfw.com

Pierre Frühling

Partner, Brussels

T: +32 (0) 2643 3406

E: pierre.fruhling@hfw.com

Michael Buisset

Partner, Geneva

T: +41 (0)22 322 4801

E: michael.buisset@hfw.com

Electra Panayotopoulos

Partner, Piraeus

T: +30 210 429 3978

E: electra.panayotopoulos@hfw.com

Yaman Al Hawamdeh

Partner, Dubai

T: +971 4 423 0531

E: yaman.alhawamdeh@hfw.com

Henry Fung

Partner, Shanghai

T: +852 3983 7777

E: henry.fung@hfw.com

Paul Hatzer

Partner, Hong Kong

T: +852 3983 7666

E: paul.hatzer@hfw.com

Dominic Johnson

Partner, Singapore

T: +65 6411 5323

E: dominic.johnson@hfw.com

Robert Springall

Partner, Melbourne

T: +61 (0)3 8601 4515

E: robert.springall@hfw.com

Nic van der Reyden

Partner, Sydney

T: +61 (0)2 9320 4618

E: nic.vanderreyden@hfw.com

Hazel Brewer

Partner, Perth

T: +61 (0)8 9422 4702

E: hazel.brewer@hfw.com

Geoffrey Conlin

Partner, São Paulo

T: +55 (11) 3179 2902

E: geoffrey.conlin@hfw.com

Lawyers for international commerce

hfw.com

© 2016 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com

São Paulo London Paris Brussels Geneva Piraeus Beirut Riyadh Kuwait Abu Dhabi Dubai
Singapore Hong Kong Shanghai Perth Melbourne Sydney