

WEIGHING IN

Raising Awareness of SOLAS Impact



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BY RICK BRIDGES AND JACOB FISHER

Since the International Maritime Organization's Safety of Life at Sea Convention, or SOLAS, applies exclusively to containerized freight and doesn't pertain to the movement of breakbulk cargo, one may not expect to read about it in this magazine. However, it's important for breakbulk shippers to be aware of the rule and to be adequately prepared should the need arise to ship in containers as part of a larger project cargo shipment.

In 2014, the IMO amended SOLAS to require shippers to verify container weights. This change was brought about by accidents resulting from overweight containers – by road and at sea – as well as studies showing that an unacceptably large percentage of significantly overweight containers are regularly tendered to carriers.

As the July 1, 2016 deadline for implementation approaches, there have been an increasing number of questions, few answers and genuine concern among stakeholders regarding the serious potential impact of the rule on global trade and competitiveness.

From the date of implementation, the shipper named on an ocean bill of lading will be responsible for providing the verified

gross mass, or VGM, of all packed containers to the carrier and terminal operator. According to the SOLAS convention, carriers are prohibited from loading any container for which they have not received a VGM from the shipper far enough in advance to complete the vessel stow plan. As defined by the IMO, the shipper is "a legal entity or person named on the bill of lading or sea waybill or equivalent multimodal transport document as shipper, and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company." By this definition, the shipper could be either the actual cargo owner or the non-vessel-operating common carrier.

Calculating VGM can be accomplished in two ways. The first option is to weigh the packed container prior to delivery at the port of loading. Alternatively, the second option is to weigh the contents including all cargo, packing materials and dunnage and add the tare weight of the container. Some terminal operators have already indicated they will not offer weighing services, as they do not have the room for scales and the queues that will be created. In most cases, the VGM will need to be certified at an off-port location.

Shippers will need to utilize certified scales and/or weighing services to obtain the VGM. SOLAS does not define "certified" precisely, but suggests the requirement would be satisfied by using a scale or weighing service that is certified and/or inspected as accurate in accordance with local or state law.

RESPONSE TO ENFORCEMENT

SOLAS does not dictate an international regulatory framework, so signatory countries will independently create unilateral enforcement protocols that may include fines or penalties against the responsible parties and possibly even the detention of vessels in extraordinary circumstances. Since very few countries have released regulatory guidance so far, significant uncertainty is anticipated around the globe for some time to come.





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Containers sit at the bow and stern of the general cargo ship *BBC Europe*. The new SOLAS rules apply exclusively to containerized freight, which will affect breakbulk carriers who carry containers as part of a larger project cargo shipment.

Credit: BBC Chartering

In the U.S., SOLAS enforcement is the responsibility of the Coast Guard. However, a senior official recently indicated that the Coast Guard has no intent to engage in any VGM enforcement activities. Instead, it has stated its belief that the current processes of submitting container weights to carriers is adequate as long as shippers and carriers have properly done their jobs.

While these sentiments may be welcome by some within the trade, the Coast Guard's enforcement (or lack thereof) does not relieve U.S. shippers or the ocean carriers which they engage from compliance with the rules contained in this international convention. Ultimately, it is the responsibility of the vessel's flag state to ensure SOLAS compliance and failure to enforce the VGM requirements could result in loss of the vessel's SOLAS certification. In some jurisdictions, SOLAS VGM requirements may ultimately be enforced by individual carriers by simply not loading containers if the proper VGM documentation is not provided by the shipper in a timely manner.

From a risk management perspective, shippers and transportation intermedi-

aries should consider the added liability exposures linked to VGM calculations and declaration to carriers. Declaring an inaccurate VGM exposes shippers to third-party bodily injury and property damage claims. For example, in the event an accident occurs in transit in which the VGM was deemed as a contributing factor, the shipper may be liable for ensuing bodily injury and property damage claims. Commercial General Liability, or CGL, insurance may respond to these types of claims, especially within the territorial boundaries of the U.S. However, since many CGL policies include a geographical scope which limits coverage to suits brought within the U.S., it may be necessary to pursue enhanced coverage or purchase a separate foreign third-party liability policy to address this exposure. Transportation intermediaries should additionally be concerned about increased exposure to professional liability claims. If their failure to report the VGM to the vessel/terminal operator(s) results in additional costs or financial injury to their client – such as demurrage or delay – they may face professional liability claims which could prove difficult to defend.

Government authorities, carriers, terminal operators and consolidators will be communicating their intentions and expectations in the coming weeks and months. While the VGM requirements are simple and straightforward, questions regarding jurisdictional enforcement and the path to compliance are not. In order to maintain the stream of commerce, it is vital that industry proactively prepares for the worst, even if continuing to hope for the best.

All shippers should decide how they will calculate the VGM for containerized freight, document the process, allocate the necessary resources, understand their carrier's requirements and communicate the plan with all stakeholders. Most importantly, it is essential that all shippers review their specific exposures to liability in a post-VGM environment and work with a knowledgeable insurance professional to develop a risk management program which adequately addresses those exposures. **BB**

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