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CLECAT guidelines on the implementation of the SOLAS amendments on container weighing

In November 2014, the International Maritime Organization (IMO) adopted mandatory amendments to the International Convention for the Safety of Life at Sea (SOLAS) Chapter VI, Part A, Regulation 2 - Cargo information. The SOLAS convention is applicable international law. The SOLAS amendments become effective on **1 July 2016** for packed containers received for transportation by sea. They place a requirement on the shipper of a packed container, regardless of who packed the container, to verify and provide the container's gross verified weight to the ocean carrier or port terminal representative prior to it being loaded onto a ship.

The IMO has issued Guidelines¹ which were intended to establish a common approach for the implementation and enforcement of the SOLAS requirements regarding the verification of the gross mass of packed containers. The purpose of this CLECAT document is to provide further guidance on complying with the rules and issues to be addressed in their implementation by industry and authorities, from the perspective of freight forwarders.

The document sets out an urgent call for action from regulators and shipping lines, to ensure that they outline their policies to implement the SOLAS amendment. This includes how shipping lines will treat Verified Gross Mass (VGM) from forwarders acting as carriers, how VGM is to be transmitted to carriers, what tolerance level governments will allow, and which certification programmes will be recognized as equivalent.

The implementation date is fast approaching and there is a pressing need to resolve these points. Indeed, for transhipment container traffic which will have begun moving prior to the deadline, compliance will be required ahead of 1 July, thus only further increasing the need for immediate action.

Identity of the shipper/forwarder as carrier

According to paragraph 2.1 of the regulation², the gross mass shall be verified by the shipper, using either Method 1, the weighing of the packed container using calibrated and certified equipment; or Method 2, the calculation method.

Method 2 entails the weighing of all packages and cargo items, including the mass of pallets, dunnage and other securing material to be packed in the container and adding the tare mass of the container to the sum of the single masses, using a certified method approved by the competent authority of the State in which packing of the container was completed.

¹ IMO MSC.1/Circ.1475 regarding the verified gross mass of a container carrying cargo.

² The Safety of Life at Sea Convention, as amended

The shipper is responsible for obtaining and documenting the “verified” gross mass (VGM) of a packed container. Under the IMO Guidelines for implementing the SOLAS requirements, ‘shipper’ is defined as “a legal entity or person named on the bill of lading or sea waybill or equivalent multimodal transport document (e.g. “through” bill of lading) as shipper and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company”. The World Shipping Council’s guidelines replicate this definition of shipper, adding the sentence “the shipper may also be known as the sender.”

When it is the original shipper who is named on the bill of lading, the roles and responsibilities are clear and simple. The situation becomes more complicated when it is the freight forwarder who is named as shipper on the bill of lading, when acting as carrier (i.e. issuing their Forwarder’s Bill of Lading) towards the original shipper. As they are the shipper towards the shipping line, they are therefore responsible for providing the maritime (ocean) carrier ('master') or the terminal operator ('terminal representative') with the verified gross mass of a packed container. In cases where the forwarder is acting as an agent (therefore the original shipper is named as such on the bill of lading), the forwarder is not affected.

As the forwarder (acting as carrier) is not actually loading the container, they do not as such qualify to verify the weight under Method 2, which applies to the party loading the container. Requiring forwarders in these situations to obtain the VGM using Method 1 would impose additional costs, handling and strain on infrastructure. Furthermore, the shipper will have established the VGM using Method 2, so to re-determine the VGM would be to reproduce a legal document which already exists.

Recommendation:

- **In these circumstances, the forwarder may issue their own document stating the VGM, using the information received from the shipper. In order for this solution to be implemented, procedures must be identified for the forwarder acting as carrier to create a separate document that follows the verified weight as provided by the actual shipper.**
- **An alternative, less optimum option would be for the forwarder to transmit to the carrier the document stating VGM which they have received from the shipper. This option, however, would raise concerns with revealing commercial information such as the shipper's identity, so the back-to-back option should be preferred.**

The SOLAS amendment calls several times for the commercial parties to come to practical agreements for implementing the requirements. Commercial agreements between forwarders and shippers may therefore state that the forwarder may transmit the VGM to the carrier on the shipper’s behalf.

This situation is further complicated when dealing with consolidations. For an actual shipper in a (LCL) consolidation environment, the SOLAS amendment does not apply. It is the consolidator who packs the container and who acts as shipper towards the shipping line.



Due to the fact that consolidated cargo is not homogenous and due to the high number of shipments handled, it may not be practical or even possible to weigh each and every single shipment. In the case of LCL cargo in a consolidation environment a forwarder could consider implementing a LCL document verifying the weight of the cargo. Similar to the FCL forwarder, the consolidator is then able to use the actual shipper's verified weight declarations to prepare its own verified weight declaration towards the shipping line.

Recommendation:

- **Consolidators should be allowed to work on procedures to combine and sum up the total of all verified weight declarations (plus dunnage, securing material, tare weight etc.) to create their own verified weight declarations to the shipping lines. Shipping lines should then accept this document as an official declaration of VGM.**
- **For this to be possible, commercial parties must agree, and national legislation permit, that the forwarder may re-use the shipper's information on their own VGM document. This must also include agreement with carriers and insurance providers so as to protect the forwarder's liability when transferring information provided in good faith by the shipper.**

Transmission of VGM information

The time by which the VGM should be provided to the carrier is subject to commercial agreement between the shipper and carrier, following the policies of the carrier in question. The SOLAS amendment says simply that VGM should be communicated well in advance of loading, but gives no specific time or method of communication. Electronic solutions such as the platform being developed by INTTRA may be considered as a preferred means of transmitting the VGM data, using electronic signatures to certify the VGM.

Recommendation:

- **Cut-off times are to be determined by shipping lines, who must therefore examine their policies for acceptance of VGM, to involve forwarders/shippers in determining the time frame, and to ensure that policies are communicated to forwarders/shippers in a clear manner well ahead of the rules coming into force in July. Procedures are also required for situations where a packed container arrives at the terminal without a VGM.**
- **Electronic platforms for transmission of VGM data should be considered as best practice, including solutions already under development and others which may be devised. The use of electronic signatures should be allowed in such instances.**
- **Shipping lines should provide the correct tare weight of the empty container in sufficient time for the shipper to be able to include this in the gross weight calculation of a container. Electronic platforms for transmission of VGM data could accommodate this.**



Margin of error

There is no provision in SOLAS for any margin of error. However, a margin of error is necessary with regard to the VGM so as to allow, for example, for natural variations in the mass of the container and materials. This is of particular importance with regard to Method 2. In line with the industry guidance issued by CLECAT, CEFIC, the ESC and the GSF in December 2014, **the VGM of a packed container should be accepted with a margin of ±5%, with a minimum variation of 500kg for containers with a VGM of under ten tonnes.**

A number of EU member states, including the Netherlands and the UK have already indicated that they will support a 5% margin of error, and trials carried out in the Netherlands proved this margin to be feasible in allowing for any eventual variation without compromising safety.

It is clear that the margin of error is a tolerance in order to accommodate variations which may occur through natural weight variations, inaccurate tare weight on official plates, or through the use of different equipment. It is not an invitation for the VGM to be estimated or for the proper procedures in accurately verifying the gross mass to not be followed. Indeed, the UK is stressing that 5% is the threshold after which parties will face prosecution for inaccurate weight declarations, so as not to expend resources on pursuing every container whose weight differs from the declared VGM. Accuracy is expected. If the requirements of the rules are followed, then an accurate VGM will be obtained and may be declared to the carrier.

Recommendation:

- **Shipping lines and national authorities should follow the pragmatic lead of countries that have allowed a 5% margin. This will allow some flexibility to deal with natural variations and other cases where there may be a divergence from the declared VGM, so as to not create blockages to the supply chain by unduly refusing carriage, while also not jeopardising safety and therefore the purpose of the rules.**

Recognition of certification programmes for certified weighers

In order to be allowed to use Method 2, the shipper must have their calculation method authorised by national authorities. National authorities must decide the basis upon which they will allow shippers to be certified as weighers.

Recommendation:

- **As a matter of best practice, national authorities should recognise existing audited certification schemes as sufficient for approval as a certified weigher for compliance with Method 2, rather than creating entire new schemes. This may include AEO, an accredited Quality Management System (such as ISO 9001 or ISO 28000), use of an ERP system, and other documented weighing procedures which meet the relevant criteria, such as those required to fulfil US pre-departure cargo declaration requirements including provision of mass.**



Concluding recommendations

- National authorities must act urgently to outline their policies to implement the SOLAS container weight verification amendment. The rules are international law, therefore will automatically come into effect on 1 July, whether national authorities have taken action or not. Authorities should do so in order to provide clarity over the terms upon which industry must comply with the rules in different countries. Failure to adopt policies for implementation will mean that forwarders/shippers will not know whether back-to-back weight declarations are possible in a given country, nor the margin of error which may apply, nor which certification schemes may be used to qualify as a certified weigher.
- Furthermore, national authorities must coordinate their policies to the greatest extent possible, in order to ensure a level playing field between countries. This is of particular importance in Europe, which can lead the way in a coordinated approach to implementing the SOLAS amendment.
- Shipping lines must also urgently provide their customers with information on their policies regarding acceptance of VGM from forwarders acting as carriers, as well as the means and timeframes for transmission. Forwarders/shippers have extensive work to do in order to prepare their systems, and it is vital that shipping lines provide clarity on these points.
- Carriers, forwarders and shippers should meanwhile come to commercial agreement through open communication on the procedures to be followed by forwarders acting as carrier, following our recommendations above.