



US exporters urge Coast Guard to delay SOLAS container weight mandate

Peter Tirschwell | Feb 04, 2016 4:26PM EST

Saying it will be impossible to implement the [SOLAS container weight rule](#) by July 1 without severely disrupting trade, U.S. exporters are calling on the Coast Guard to delay the rule until it can be amended and determined that they won't face a competitive disadvantage against foreign exporters. But carriers are pushing back, saying the law does not allow for any delays.

Following a Wednesday meeting in Atlanta attended by 60 exporters and the U.S. head of a large [container line](#), the head of an agriculture shippers group said it was clear it would be impossible not to disrupt trade while meeting the rule's requirement that a shipper-signed weight, the verified gross mass, is given to the carrier and marine terminal sufficiently in advance of vessel stowage to allow stowage plans to be created.

"We cannot put U.S. exporters at a greater competitive disadvantage than they already are due to the high price of the U.S. dollar," Peter Friedmann, executive director of the group, the Washington-based Agriculture Transportation Coalition, told JOC.com.

Friedmann said the group was calling on the Coast Guard to delay implementation much the same way the Secretary of Homeland Security delayed implementation of the 100 percent scanning requirement for all inbound containers as mandated under the 2006 Safe Ports Act. He said the rule should not be implemented in the U.S. until it is determined that implementation would put U.S. exporters on a level playing field with other exporters. At the very least the rule should be put off until July 1, 2017, he said.

Under the amendment to the Safety of Life at Sea, or SOLAS, convention originally approved in 2014, individual nations that are party to SOLAS will implement the rule according to their own guidelines, ensuring that the core requirements that shippers provide a VGM based on actual weighing of the cargo, and that carriers and terminals do not load a container for which no weight has been provided — are met. (An extensive and up to date Q&A about the rule is available on JOC.com [here](#). A link to the JOC's complete coverage of this issue is [here](#).)

"We believe the U.S. Coast Guard should decree that it will not implement this and instruct the terminals not to implement it until such time that all the stakeholders are satisfied that this will not to disrupt export commerce," Friedmann said.

The issue has been raised by Friedmann's group on Capitol Hill and members of Congress are starting to look into the issue. "There's growing interest in global container weight and it's something that both Representative Hunter and the subcommittee will continue evaluating. With the competing interests involved, it's important to fully understand all the arguments to determine the best way ahead. And that's something we're in the process of doing," said Joe Kasper, chief of staff to Duncan Hunter, R-Calif, chairman of the [Coast Guard and Maritime Transportation](#) Subcommittee.

"The Commerce Committee is making inquiries about the impact of the mandate," said Frederick Hill, communications director for Sen. John Thune, R-S.D., chairman of the Commerce, Science and Transportation Committee. Thune has been a strong supporter of agricultural exporters, having pushed for faster responses to shippers' rail complaints via a Surface Transportation Board reform bill and highlighting late last year how U.S. West Coast port congestion was crippling outbound shipments. He was also instrumental in pushing the Department of Transportation to [create metrics on port productivity](#).

The U.S. Coast Guard is expected this month to issue guidelines on how the rule will be implemented, but it's unclear how far they will go in addressing the range of outstanding logistics issues. But the World Shipping Council, the Washington-based trade group representing container lines globally, said unlike in the Safe Ports Act, which authorizes the Homeland Security secretary to postpone the scanning rule, nothing in the law behind the container weight mandate allows for a delay in implementation.

"The Secretary of (the Department of Homeland Security) is authorized to postpone implementation of the 100 percent scanning provision if he/she determines that it cannot be successfully implemented. There is no similar provision in the SOLAS amendments," John Butler, CEO of the World Shipping Council, told JOC.com in an email on Thursday. "More to the point, nobody can seriously make the case that in 2016 it is unreasonable to require a shipper to accurately describe the weight of a loaded container that it introduces into international commerce. We don't know of any other shippers that are making such a claim."

To the point that the rule shouldn't be implemented in the U.S. until other countries have implemented it, Butler said: "SOLAS is a safety convention; it does not allow member countries to ignore safety on the grounds of economic considerations."

Having recently [called](#) the SOLAS rule a "fiasco," Friedmann stepped up criticism of the rule and the process that led to its adoption by the Maritime Safety Committee of the International Maritime Organization, the London-based United Nations agency. He said U.S. shippers and terminals had no role in the development of the rule, which will impact container supply chains back to the origin hundreds or thousands of miles from the seaport from which the container left.

The rule requires the shipper named on the bill of lading to physically weigh the cargo — or have a designated representative do it — using one of two methods (either weighing the contents of the container and adding it to the unladen weight of the container, or weighing the sealed container and its contents as one), and to submit a signed VGM to the carrier. The rule makes it illegal for the carrier and terminal to load a container onto a ship for which no VGM has been received and requires they use the VGM in building the vessel stowage plan.

Among the key emerging issues is the time it will take to obtain the VGM and get it to the carrier with enough advanced notice for it to be used in the stowage plan. Other issues include how the VGM will get into the hands of the carrier given that manual documentation is used for an estimated half of the roughly 300,000 containers shipped daily on a global basis, according to the online container portal Intra. Still further issues surround the question of whether terminals will allow containers unaccompanied by a VGM into their facilities.

"There were many parties who were never engaged in the development of this rule, including the marine terminals — they were never part of this discussion — and the shippers were never part of the discussions," Friedmann said.

How to meet the container weight mandate

As a shipper, what are your options?

METHOD 1
Take a loaded container over a **weighbridge**, subtract the weight of the truck, chassis, and fuel to get the weight of the packed container.

METHOD 2
Weigh each item – including its packaging, palleting, dunnage and other packing and securing materials – going into the box. Add that sum to the weight of the container to find the weight of the packed container.

TOTAL WEIGHT
- TRUCK, FUEL, etc.
LOADED WEIGHT

GOODS + PACKING, etc.
+ CONTAINER
LOADED WEIGHT

Scales must be certified and calibrated in line with the national standards of the country where the weighing occurred and Method 2 is subject to national certification and approval.

What are you required to do?

Provide a document signed by the shipper to the shipping line and terminal declaring that the **shipper verified** the weight and that it was weighed properly.

The SOLAS amendment will be enforced by the coast guard or other agency responsible for SOLAS regulations in a given country and punishments for violations will vary by country.

What happens in the case of noncompliance?

There are all kind of possibilities for what could happen to the box that failed to provide the certified weight document but none are settled.

Terminals may choose to hold a container or send it back, but whatever happens, the ship will leave and the container will not.

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Prior press releases indicated that a few different non-governmental groups other than the World Shipping Council were involved in discussions at the IMO over five years leading to the adoption of the container weight rule. One group, the Global Shippers Forum, has the head of the U.S.-based National Industrial Transportation League on its board. Another group that was involved, International Cargo Handlers Association, has some terminals as members.

But that said, based on the large and growing number of questions from shippers, carriers, terminals and other parties about how the rule will get implemented with less than a half a year before it takes effect, it seems clear that the preparation was inadequate. As time has gone on, the confusion and the list of questions only seems to grow, with only bits and pieces of clarity coming from carriers or other parties.

In an interview with JOC.com on Wednesday, Friedmann went further, suggesting that given the hurdles to get it implemented, there was no compelling rationale for the rule to begin with. He said scant evidence of problems associated with overweight containers has been presented and he said there was just one vessel casualty, that of the MSC Napoli, which was scuttled in the English Channel in 2007, that has been cited as rationale for the rule. Though the U.K. coast guard found many containers to be overweight and noted in its report that "... The stresses acting upon a container ship's hull cannot be accurately controlled unless containers are weighed before embarkation," Friedmann said it was "inconclusive" that overweight containers were the actual cause of the accident.

"The creation of this rule was done without any problem identified. Why do we have this rule?" Friedmann said.

"Representatives of over 160 governments who carefully considered the issue for the last five years disagree," Butler said. "The decision by the SOLAS parties to adopt the rule was based on multiple sources of information indicating that misdeclared containers are prevalent and dangerous. That decision was made two years ago after extensive discussion."

"It is not open for reconsideration," Butler said. "This is now the law, and the job at hand is to make sure it is implemented."

Some say the issue of overweight containers has long been an issue for carriers. Even the founder of containerization, Malcom McLean, understood the danger. According to William Gotimer, McLean's personal and business attorney and general counsel for all his transportation companies from 1991 until McLean's passing in 2001, overweight containers were a big issue for the Sea-Land Service Inc. founder.

"Malcom McLean had a visceral sentiment on the issue of overweight containers. He strongly believed they were dangerous on the road and in the port," Gotimer said. "I believe it stemmed from an accident he either once had or knew of where the driver was unable to control the load due to its weight. He had me speak with each of the various transportation departments of the states up and down the eastern seaboard to seek their support to limit overweight containers citing the constant damage overweight loads were doing on the roads."

Gotimer said McLean refused to accept even legally overweight containers on his Trailer Bridge barge service to Puerto Rico. He was concerned not just about a container being overstuffed, but those handling it, including the truckers and dockworkers, not knowing it was overweight and being put in harm's way as a result. He said the issue stemmed from the switch from commodity pricing for containers to container pricing, i.e. the rate became based on the container irrespective of what was inside it. That created "a great incentive to overstuff it, and an incentive to lie about what was in it."

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