

# DABELSTEIN & PASSEHL

Hamburg  Leer



IUMI webinar  
SOLAS amendments  
container weight

## IUMI Disclaimer

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- The International Maritime Organization (IMO) adopted mandatory amendments to the International Convention for the Safety of Life at Sea (SOLAS)
- SOLAS has 162 contracting states which flag about 99% of merchant ships around the world in terms of gross tonnage

- a verified container weight (VGM) is a **condition** for loading a packed container on board a vessel from **1 July 2016** on
- background: for security reasons a correct vessel's container stowage plan should be safeguarded







- SOLAS is applicable global law
- IMO has published guidelines for the interpretation and application of the SOLAS amendments

- **domestic implementation** have or are still taking place
- UK: The Maritime & Coastguard Agency has issued Marine Guidance Note MGN534 (M+F)
- USA: Coast Guard declared that existing U.S. laws and regulations for providing verified container weights are equivalent to the SOLAS requirements
- Germany: still in process



## Poll 1

Status domestic implementation in your country?

- still in process
- at hand
- not clear

## SOLAS amendments text:

- In the case of **cargo carried in a container**, except for containers carried on chassis or a trailer when such containers are driven on or off a ro-ro ship engaged in short international voyages ..., the gross mass ... shall be verified by the **shipper**, either by:

## SOLAS amendments text:

- 1 weighing the packed container using calibrated and certified equipment (**method 1**)
- 2 weighing 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 (**method 2**)

## SOLAS amendments text:

- The **shipper of a container** shall ensure the verified gross mass is stated **in the shipping document**. The shipping document shall be:
  - 1 **signed** by a person duly authorized by the shipper; and
  - 2 submitted to the **master** or his representative **and** to the **terminal** represen-

## SOLAS amendments text:

tative **sufficiently in advance**, as required by the master or his representative, to be used in the preparation of the ship stowage plan



## SOLAS amendments text:

If the shipping document, with regard to a **packed container**, does not provide the verified gross mass **and the master or his representative and the terminal representative have not obtained the verified gross mass of the packed container, it shall not be loaded on to the ship.**

## IMO Guidelines:

- purpose of the guidelines is to establish a common approach for the implementation and enforcement of the SOLAS requirements
- provide recommendations on how to interpret and apply SOLAS provisions and guidance
- **domestic law** establishes specific duties, penalties and liabilities

## IMO Guidelines:

- **Shipper:** 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.

## Shipper:

- company which instructed the sea carrier
- NVOCC
- forwarder/carrier
- sender which instructed the forwarder/carrier

## IMO Guidelines:

- **Shipping document** means a document used by the shipper to communicate the verified gross mass of the packed container. This documents can be **part of the shipping instructions** to the shipping company or a **separate communication** (e.g. a declaration including a weight certificate produced by a weigh station).



## IMO Guidelines:

- **Individual, original sealed packages** that have the accurate mass of the packages and cargo items clearly and permanently marked on their surfaces, do not need to be weighed again when they are packed into the container.
- If a container is packed by multiple parties or contains **cargo from multiple parties**, the shipper is responsible for obtaining and documenting the VGM of the **packed container**.

## IMO Guidelines:

- Because the contract of carriage is between the shipper and the shipping company, not between the shipper and the port terminal facility, the shipper may meet its obligation ... by **submitting the VGM to the shipping company**. It is then **the responsibility of the shipping company** to provide information regarding the VGM of the packed container to the terminal representative in advance of ship loading.

## IMO Guidelines:

- There is **no** SOLAS prescribed **time deadline** for the shipper's submissions of the VGM other than such information is to be received **in time** to be used by the master and the terminal representative in the ship stowage plan.
  - e.g. Hapag Lloyd: 4 h before load list cut off (load list cut off: 24 h before arrival of vessel)
- It is the **responsibility of the shipping company** ... to inform the shipper, following prior discussions with the port terminal, of any specific time deadline ...

## IMO Guidelines:

- **Intermodal container movements:** The VGM of a packed container should be provided to the **next party** taking custody of the container.

## IMO Guidelines:

- **Containers exceeding their maximum VGM:** A container with a VGM exceeding its maximum permitted gross mass **may** not be loaded onto a ship.



**no VGM: shall not be loaded**



## IMO Guidelines:

- Situations may occur where a packed container is delivered to a port terminal facility without the shipper having provided the required VGM of the container... the master or his representatives and the terminal representatives **may obtain the VGM of the packed container on behalf of the shipper...**

## IMO Guidelines:

- **Master retains ultimate discretion** in deciding whether to accept a packed container for loading onto his ship. Availability to both the terminal representative and to the master or his representative of the VGM of a packed container sufficiently in advance to be used in the ship stowage plan is a **prerequisite** for the container to be loaded onto a ship to which the SOLAS regulations apply. It does, however, **not constitute an entitlement for loading**.

## IMO Guidelines:

- **Enforcement** falls within the competence and is the responsibility of the SOLAS contracting governments
- Any costs associated with the non-loading, storage, demurrage or eventual return of the container ...  
**should be subject to contractual arrangements between the commercial parties.**

## damages and costs scenarios:

- administrative penalties
- weighing, handling and storage costs
- container demurrage
- cargo delay
- damages to vessel and other cargo
- **contractual claims + bill of lading**

## Carrier Hague-Visby Rules:

- art. III 2: the **carrier** shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried
- not: weigh

## Carrier Hague-Visby Rules:

- art. IV 2: Neither the **carrier** nor the ship shall be responsible for loss or damage arising from:
  - (i) act or omission of the **shipper** or owner of the goods, his agent or representative
  - (o) insufficiency or inadequacy of marks

## Shipper Hague-Visby Rules:

- art. IV 3: The **shipper** shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, neglect of the shipper, his agents or his servants.
- fault, neglect: **breach of SOLAS obligation**

## Germany

- no administrative penalties
- random inspections by BG Verkehr (reluctant in the first weeks)
- no tolerance (only admissible scale tolerance), aim is a European standard (e.g. Belgium 2 %, Netherlands, UK 5 %)



## Polls 2 & 3

### Penalties & tolerance in your country?

- penalties: yes / no
- tolerance: no / 2% / 3% / 5%

## German law

liability of shipper is **unlimited**, but can be limited  
in **general terms and conditions**

## German law

### Section 414 HGB (transport law)

The consignor shall, **even if he is not at fault**, compensate the contractual carrier for any damage, costs or expenses caused by any of the following:

...

2. inaccuracy or incompleteness of any information in the consignment note...

## German law

### Section 488 HGB (shipping law)

The contractual shipper shall compensate the contractual carrier for any damage, costs or expenses caused by any of the following:

...

1. the inaccuracy or incompleteness of the required information regarding the goods..

However, the contractual shipper shall be released from liability if the breach of duties **is not due to his fault or neglect**.

Where a **bill of lading** is issued, the contractual shipper ... shall compensate the contractual carrier, even if they are **not at fault**, for any damage, costs or expenses caused by ... the inaccuracy or incompleteness of any information in the bill of lading .. as regards the goods' quantity, number or weight ...

## Poll 4

Shipper's liability in your country?

- unlimited
- limited
- limitation admissible in standard terms

## Insurance

- Cargo insurance
  - DTV Cargo Insurance Conditions 2000/2011
  - DTV Cargo Pure Financial Losses Clause: Financial losses due to **delays** which were incurred as a consequence of a shipment insured under this cargo policy but which **did not arise from a loss** involving said cargo. The above applies provided that the **carrier involved in the insured shipment is liable** under the terms of a standard forwarding contract under German law.
    - no punitive damages/contractual penalties
    - clause 3 DTV Cargo: The insurer is not obliged to indemnify if the insured event is caused by a wilful or **grossly negligent act** of the insured.
    - contract shipper-carrier: obligation to weight?
  - Institute Cargo Clauses

## Insurance

- Carrier's liability insurance
  - DTV-VHV Conditions 2003/2011:
    - liability as contractor of freight and forwarding contracts
    - notice to insurer of obligation to provide for VGM?
    - no coverage for non performance of own obligations out of the freight/forwarding contract: VGM?
    - insurer is not obliged to indemnify if the insured event is caused by a wilful act of the insured

## Insurance

- Charterer's liability insurance
- Public liability insurance



**Thank you very much for your attention!**

**Questions???**

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- Survey
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- Save-the-date: 31 August 2016 on “Perishables“
- Questions? [Hendrike.Kuehl@iumi.com](mailto:Hendrike.Kuehl@iumi.com)