REPORT TO THE UNION OF GREEK SHIPOWNERS

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HIGHLIGHTS

CONTAINER WEIGHT RULE ROILS EXPORTERS

U.S. PRESSURES NORTH KOREA WITH TOUGHER ECONOMIC SANCTIONS

U.S. EXPORTERS CHALLENGE IMO CONTAINER WEIGHT RULE; COAST GUARD SAYS IT HAS NO AUTHORITY OVER SHIPPERS

As the deadline for compliance with an international requirement to verify the weight of shipping containers approaches, disagreement between U.S. shippers, ports, and ocean container carriers has surfaced as to the impact of the regulation on U.S. exports, particularly agricultural exports.

As of July 1, 2016, the amendment (Regulation VI-2) to the International Convention for the Safety of Life at Sea (SOLAS) will require the verified gross mass (VGM) of packed containers – the combined weight of the container and the cargo -- to be documented before carriers or terminal operators can load them aboard ships. Carriers and terminals will need to receive the VGM in time to use it to make the stowage plan for loading the ship. Under the terms of guidelines issued by the International Maritime Organization (IMO), the responsibility for verifying the weight of the container and its contents is to fall on the shipper. To obtain the VGM, two options are offered. The packed container can be weighed using certified scales. In the alternative, the cargo plus packing and securing equipment can be weighed, and then this figure can be combined with the "tare weight" of the container (that is, the declared weight of the empty container as shown on the outside of the box) to determine the VGM.

Despite a growing clamor from private interests to intervene or offer policy guidance, the U.S. Coast Guard is taking a decidedly "hands off" approach to the issue, characterizing it as one to be dealt with by business arrangements. Rear Admiral Paul Thomas, Assistant Commandant for Prevention Policy, recently made clear that there will be no action by the Coast Guard to delay the effective date of the mandate. In a statement released after he attended a "listening session" convened at the Federal Maritime Commission on February 18, 2016, RADM Thomas said that the Coast Guard has no regulatory authority over shippers and that there is no Coast Guard requirement telling domestic shippers to comply with SOLAS Regulation VI-2. Stated Thomas, "Although SOLAS Regulation VI-2 is written in a manner that requires shippers to provide certain information to the vessel, there is no authority for the U.S. Coast Guard, or any

other federal agency, to apply SOLAS to domestic shippers. In order to do so the Coast Guard would have to enact domestic regulations …" Rather, SOLAS' mandate applies to vessel operators and is imposed on them by their flag states. Thus, U.S. shippers in the course of doing business in a global environment will have to work cooperatively with their ocean carrier to adhere to the mandate if they wish to ship their goods on a covered vessel. Were the U.S. to attempt to act unilaterally to delay the effective date, that would simply excuse compliance by U.S.-flagged vessels, putting them in regulatory jeopardy when they arrive at foreign ports. Unilateral U.S. action to delay would not help U.S. exporters because it would have no impact on the foreign-flagged vessels "that carry the vast majority of U.S. exports." RADM Thomas makes the somewhat tortured explanation that SOLAS Regulation VI-2 is an enforceable rule that applies to vessel operators (not shippers) and that the IMO guidance document (issued in June 2014) stating that the shipper must supply the VGM for the container is advisory only, because IMO has no authority to regulate shippers. The Coast Guard takes the position that the method of compliance with the rule should come about by means of business negotiations between a carrier and a shipper, not by means of a Coast Guard-imposed solution.

In the U.S., the Agriculture Transportation Coalition (AgTC) is the most outspoken critic of the container weight mandate. It asserts that U.S. agricultural exporters will find it difficult to comply with the regulation and that the result will be added shipping delays and higher costs for their products. AgTC maintains that the shipper does not own, control, or maintain the containers, which are owned or leased by the carrier. When implementation of the rule starts, AgTC foresees "turmoil" at marine terminals resulting in a "very significant impediment" to U.S. exports of agricultural and forest products.

AgTC maintains that the shipper cannot rely on the tare weight shown on the container, as it is frequently not accurate. It points out that fluctuating levels of moisture or repairs of or reinforcement to the container may cause the weight of a container and its contents to vary as much as 10 percent over time. It argues that not all shippers can transmit VGM and shipping documents electronically in advance of the container arriving at the marine terminal. Many marine terminals do not have certified scales on premises to weigh a container that arrives without proper documentation.

On behalf of carriers, the World Shipping Council (WSC) maintains that vessel operators are willing to work with exporters to ensure compliance by the July 1 deadline. At the FMC listening session, WSC Executive Director John Butler stated that a shipper that uses the posted container tare weight in computing VGM will meet its obligation under the requirement. However, at a subsequent meeting in California, former Executive Director Chris Koch expressed consternation with the Coast Guard's position that neither SOLAS nor any U.S. rule imposes a Coast Guard-enforceable requirement on U.S. exporters.

The controversy over SOLAS Regulation VI-2 shines a spotlight on an interesting conundrum: shippers are not typically represented as part of the U.S. national delegation to the IMO, but IMO policy decisions can have profound impacts on their business practices. As the AgTC asserts, "This rule that was implemented was agreed upon without any outreach or 'reality check' with the shipping public, specifically with the U.S. exporters who are now being burdened with certifying to the ocean carriers the weight of the carriers' very own equipment

(containers)! … Representation of the United States exporters at the International Maritime Organization is a matter which should be addressed going forward. We believe this situation, and the need to avoid similar circumstances in the future, warrants a Congressional inquiry into the International Maritime Organization process, the means by which the United States can be bound, and how this rule was adopted without U.S. exporter or importer notice or input, or consideration of impact on U.S. economy."

U.S. IMPOSES SECONDARY SANCTIONS ON CERTAIN COMMERCE WITH NORTH KOREA

Even as the U.S relaxes sanctions against non-U.S. persons and entities who trade with Iran, it is significantly "ratcheting up" sanctions against those who do business with North Korea. On February 18, 2016, President Obama signed the North Korean Sanctions and Policy Enhancement Act of 2016 (Public Law 114-122).

This legislation (H.R. 757) had been introduced over a year ago but had remained dormant in Congress. That changed early in 2016 when over the space of five weeks, North Korea first conducted a banned nuclear bomb detonation and then launched a satellite using a ballistic missile. The House and Senate acted quickly to vote for H.R. 757 by overwhelming majorities.

While the U.S. has previously imposed certain economic sanctions against North Korea under the authority of general sanctions and trade laws, Public Law 114-122 represents the first time that Congress has enacted a statute specifically aimed at North Korea.

The new law is intended to use nonmilitary means to pressure North Korea for a variety of unacceptable actions, including violation of its earlier commitments to dismantle its nuclear weapons program, production of weapons of mass destruction, and proliferation of nuclear weapons, missiles, and other weapons of mass destruction to state sponsors of terrorism. According to the House Committee on Foreign Affairs, "The purpose of this legislation is to compel the Government of North Korea to verifiably suspend, and ultimately dismantle, its nuclear weapons and ballistic missile programs, including, but not limited to, the cessation of all uranium enrichment and plutonium-related activities. Through the application of broad-based sanctions, it is also intended to deprive North Korea of the resources it requires to develop other unconventional weapons and ballistic missiles, acquire destabilizing convention weapons that threaten U.S. allies in the region, support terrorism in the region and across the globe, and engage in the systematic oppression of the people of North Korea."

Section 104 mandates that the President must designate any person (U.S. or non-U.S.) found to be directly or indirectly engaging in trade with North Korea in any good, services, or technology to be used for weapons of mass destruction (or their delivery systems) or that contributes to the use, development, production, or acquisition of a nuclear, radiological, chemical or biological weapons. Involvement in trade of precious metals, graphite, raw or semi-finished metals or aluminum, steel, coal, or software for industrial processes related to weapons of mass destruction and their delivery systems will also lead to designation. Other grounds for

mandatory designation include involvement in trade of arms and of certain "luxury goods," including luxury automobiles, yachts, jewelry, fashion accessories, cosmetics, perfumes, designer clothing, electronic entertainment software and equipment, sports equipment, tobacco, wine and alcoholic beverages, and art.

The consequences for a person or company being designated are severe. A vessel used to facilitate banned transactions that comes within the jurisdiction of the United States may be seized and forfeited. A designated person's assets or financial transactions that come into or within the reach of the United States shall be blocked or prohibited (thereby shutting off the U.S. financial and banking system to such person).

The new law also aims to put pressure on foreign jurisdictions that may turn a blind eye to the contents of ships that trade with North Korea. Section 205 calls for the identification of foreign seaports at which inspections of ships originating in North Korea, carrying North Korean property are not sufficient to prevent the facilitation of sanctionable activities. U.S. Customs and Border Protection is given the discretionary authority to conduct enhanced inspections of goods that come from such an identified port.

The U.S. hopes to put even more pressure on North Korea by tightening sanctions imposed by the United Nations. It has negotiated a draft resolution with China and hopes to have it debated and approved by the U.N. in the near future. If approved, it will require U.N. member states to conduct mandatory inspections of all ships' cargo passing through their territory to or from North Korea to look for illicit goods. Previously states were only required to do this if they had reasonable grounds to believe there was illicit cargo.

DOCUMENTS INCLUDED

SOLAS Chapter VI, Carriage of Cargoes and Oil Fuels, Part A, General Provisions, Regulation 2 – Cargo information, paragraphs 4-6.

International Maritime Organization, MSC.1/Circ. 1475, June 9, 2014: *Annex – Guidelines Regarding the Verified Gross Mass of a Container Carrying Cargo*.

Coast Guard Maritime Commons, March 2, 2016: *SOLAS Amendments to Container Weight Requirements – New FAQs Published*.

The Wall Street Journal, February 29, 2016: "Shipping Companies Seek Details on 'Impossible' Container Weight Rule."

The Wall Street Journal, February 18, 2016: "Container Weight Rule Won't Carry Penalties in U.S. – Coast Guard."

Agriculture Transportation Coalition, February 2016: *AgTC Position Paper: Safety of Life at Sea (SOLAS) Container Weight Documentation*.

Agriculture Transportation Coalition, Press Release, February 17, 2016: "Agriculture Transportation Coalition Members Speak Out on SOLAS Container Weight Documentation Amendment at Federal Maritime Commission Meeting Tomorrow."

World Shipping Council, January 2015: *The SOLAS Container Weight Verification Requirement*.

World Shipping Council, July 1, 2015: *Guidelines for Improving Safety and Implementing the SOLAS Container Weight Verification Requirements*.

World Shipping Council *et al*., December 2015: *Verified Gross Mass Industry FAQs*.

Public Law 114-122, the North Korea Sanctions and Policy Enhancement Act of 2016.

Clyde & Co., February 26, 2016: "U.S. Enacts Secondary Sanctions Concerning North Korea."

The National Committee on North Korea, February 18, 2016: "Summary of the North Korea Sanctions and Policy Enhancement Act of 2016."

The Washington Post, February 18, 2016, "The Voyages of the *Dawnlight*: Where is it Headed? And What is it Carrying?"

Reuters, February 26, 2016: "U.S., Backed by China, Proposes Tough N. Korea Sanctions at U.N."