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## **CLIENT ALERT**

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### **Important Notice Regarding SOLAS and the New VGM Requirements**

by  
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We have learned that Admiral Paul Thomas of the US Coast Guard has now formally clarified the position of the US Government about the vessel operators' attempts to enforce the so-called Verified Gross Mass (VGM) rules on US exporters. In a meeting in a SOLAS forum held by the Journal of Commerce today, Admiral Thomas specifically set forth the Coast Guard's views about the International Maritime Organization (IMO) and carrier guidelines that purported to require, as a legal matter, the exporter listed on carrier master bills of lading to provide a certification of the total weight of any container tendered to the vessel operators, including the tare weight of the container.

Essentially, the Coast Guard is taking the position that (1) as long as shippers (exporters and NVOCCs) have been tendering the accurate weight of the cargo being tendered, there is no need for them to change any processes, (2) the Coast Guard assumes that the carriers have been accurately reflecting the gross weight of the containers (including the cargo and the tare weight of the containers) being stowed in the past, (3) the carriers know what the tare weights of the containers are so that they have the ability to do their stow plans without requiring the shippers to also provide that data, (4) there is nothing unsafe about the existing processes as long as the shippers and carriers have properly done their jobs, (5) the Coast Guard will not do anything to enforce the new VGM rules on either shippers or carriers, and (6) the Coast Guard would need to implement any changes, through an appropriate regulatory rulemaking, before the IMO could properly compel carriers or shippers in the U.S. trade to make any change in their business practices.

This is obviously very good news to US exporters and OTIs. As we have contended in our discussions with the carriers, there is nothing deficient or inherently unsafe about the existing

export processes. US exporters and NVOCCs have been required to provide accurate information about the weight of cargo being tendered for export for over 20 years and there is no reason to believe that the carriers have been unable to safely develop their stow plans due to some defect in those procedures. On the other hand, the new VGM rules would create significant problems for US exporters and OTIs, create delays in exporting, increase costs and require additional software programming in order to develop interfaces with the carriers who have still not established mechanisms to accept this data from their customers.

We assume that this is not the last word on this topic and that the carriers will continue to push to require exporters and OTIs to separately provide container tare weights as a precondition to tendering cargo. We believe, however, that it would be unreasonable for the carriers to try to compel shippers to provide anything else when the existing processes already give them accurate information about what is being tendered. Accordingly, we will be monitoring this situation to determine whether it will be necessary to bring any unreasonable demands by the carriers to the Federal Maritime Commission, since the Shipping Act requires that all carriers and marine terminal operators establish, maintain and enforce just and reasonable practices relating to the receipt and handling of cargo.

Parenthetically, it is possible that the carriers may seek FMC approval of a collective Agreement that might attempt to enforce these rules as a set of “best practices.” In that event, we will advise you further with a view towards challenging that attempt at the FMC.

Finally, while the position of the Coast Guard appears to resolve the issue with respect to exports from the U.S., importers in this country may need to be mindful of this situation when entering into commercial transactions with their overseas suppliers. If the commercial terms require the U.S. buyer to take on the obligation to load the cargo of the foreign port, it could take on a significant risk if their supplier does not supply the certified VGM to the carrier. Accordingly, you may wish to alert your customers to this possibility.

If you have any questions about this, please do not hesitate to contact me.