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CLIENT ALERT

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Update on SOLAS

by
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As has been widely reported in the trade press, it appears the SOLAS and VGM issue that has caused great concern to the shipping community over the past year has been largely resolved.

Notwithstanding the prior assertions of the carriers that they would not accept any cargo for ocean transportation for which the shipper or NVOCC had failed to provide a Verified Gross Mass (“VGM”) certification, those demands have largely disappeared in the United States. Regardless of what the carriers might require in other countries, in the United States it appears clear the carriers will be accepting cargo on July 1, 2016 even if the shipper or NVOCC has not provided the VGM.

To briefly recap the situation, under the auspices of the International Maritime Organization (“IMO”), the carriers agreed to an amendment of the SOLAS Convention to require VGMs from shippers prior to loading any containerized cargo. Although the U.S. Coast Guard was present at the IMO meetings on this subject and did not object to the proposed amendment, the Coast Guard nonetheless took the position that it was satisfied that shippers and carriers were already acting appropriately in determining container weights in the United States export trade and that no party had to change their practices as a result of the SOLAS amendment. Until very recently, however, the carriers had insisted the Coast Guard was incorrect and shippers would have to provide the VGM certifications prior to loading.

As a result of the efforts of various trade associations, including the NCBFAA and Ag OTC, and with the significant assistance of FMC Commissioner Rebecca Dye, in recent weeks the tide began to turn against the carriers. To make a long story short, the vessel operators have finally agreed that the existing practice, whereby the marine terminals weigh containers prior to loading, is sufficient compliance for purposes of the VGM rule, and the carriers have largely

indicated they will accept the weight provided by the terminals in lieu of receiving anything from shippers or NVOCCs with respect to traffic moving to the terminals by truck. With respect to rail piggyback traffic, where the containers are not weighed by the marine terminals, the carriers have agreed that they will provide tare weights of the containers to be added to the weights reported by the shippers and NVOCC's, and that would again constitute sufficient compliance with the VGM amendment.

And, in overseeing these collective discussions among the carriers and terminals, the FMC has approved an Agreement that will insulate the parties from antitrust concerns. The FMC's approval was conditioned upon an agreement that the discussions to implement the VGM amendments will not lead to any increased costs for shippers or the inappropriate transfer of responsibility from the carriers to the shipping community.

This is obviously excellent news for shippers and NVOCCs in the United States. However, since this has all moved very quickly, we recommend that your company specifically check with each carrier and terminal with respect to their understanding of what is required before making arrangements to have any cargo delivered to a carrier or port. There is always the possibility that some carrier will act independently and continue to insist upon receipt of VGMs from its shippers. Similarly, it is also possible that some marine terminals may refuse to provide VGMs to the carriers. Therefore, at least during the initial shakedown period, it would be prudent to verify the status of the VGM requirement with each carrier and terminal with which your company deals.

If you have any questions concerning this, please do not hesitate to contact us.