

Testimony of
Donna Lemm
Vice President of Global Sales
Mallory Alexander International Logistics
On Behalf of the Agriculture Transportation Coalition
Before The
U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Coast Guard and Maritime Transportation
Maritime Transportation Safety and Stewardship Programs
April 14, 2016

Good Morning Chairman Hunter, Ranking Member Garamendi, and distinguished Members of the Subcommittee. My name is Donna Lemm. I am here today representing many of your constituents, exporters of thousands of ocean containers of corn, rice, wheat, nuts, hay, cotton, poultry, beef, pork, lumber, paper and countless other agriculture and forest products. I am the Vice President of Global Sales for Mallory Alexander of Memphis, TN. We provide ocean services for many US exporters, managing a major share of all the US cotton exports, as well as representing a large segment of the United States forest product shippers. I am also here as Chair of the Agriculture Transportation Coalition's Container Weight Committee. The AgTC is the voice for the U.S. exporter – from small farmers to the largest agriculture merchants located in your Districts, who are alarmed by this proposed change and the way the ocean carriers now want us to report the weight of our cargo.

The impact of an ill-conceived application of the SOLAS amendment to U.S. exporters will be massive. One company estimates that their cost to export goods will rise 20 to 40%; an estimated \$4 million for one of our members. Further, this problem will create massive disruption at the ports again! We cannot afford a repeat performance of last year's port disruption when there is something we can do together to prevent this from happening again.

My goal today is to let you know that:

1. We are committed to safety.
2. The 'Best Practices' guideline for the SOLAS amendment issued by the World Shipping Council and circulated by the ocean carrier members of OCEMA will not advance safety, and will result in massive disruption to ports and supply chains, according to an investment bank report. Their guidelines only offer two methods to the shipper: a.)

scaling of container or b.) calculation of gross weight of cargo and empty weight of ocean carrier equipment to create Verified Gross Mass (VGM), when in fact there are multiple acceptable methods including our current process of reporting our gross and net weights of our cargo to the carrier.

3. Current practices are acceptable, legal and compliant. The U.S. exporter is subject to laws and regulations mandating accurate reporting and subject to heavy fines and penalties for inaccuracies. The US Coast Guard confirms current practices are compliant.
4. We have a “rational” approach which would minimize disruption and cost in which the exporter is responsible for the weight of its cargo, and the ocean carrier is responsible for the weight of its container and together these weights are calculated to provide verified gross mass. It is legal, compliant and will meet the SOLAS objectives according to the Coast Guard.

The Coast Guard has acknowledged that current methods are indeed one of several ways a shipper and carrier can work together for compliant weight calculations. No doubt the Admiral, will confirm again today that there is flexibility in the SOLAS guidelines.

The President’s National Export Initiative has been a focus of this Administration, with the goal to improve conditions that directly affect the private sector's ability to export. The goal is not to create unnecessary administrative processes and heavy costs for the US exporter, but unfortunately that is what the SOLAS amendment, if implemented as OCEMA proposes, would do.

The Problem for US exporters:

1. Only ten of 171 member IMO countries have announced a position about implementing this amendment. And, only three of those countries have actually issued final rules. The other seven have just issued drafts or discussion pieces of what they may do. The U.S.’ largest trading partner, China, has not taken a position.
2. The amendment shifts liability to exporters to certify the accuracy of the weight of carrier owned/leased equipment. It is ludicrous to ask a shipper to look on the side of every container and report its weight, which we know may not be accurate since it is equipment we do not own or lease.
3. Moreover, the carriers have refused reasonable compromises, such as the “Rational Method” AgTC proposes, as well as a suggestion for carriers to produce an industry acceptable average for weights of the containers they own and lease, since the containers of all types tend to fit within reasonable ranges of weights.
4. The amendment imposes new programming costs. Most US exporters do not even have software with a field designed to store the empty weight of a carriers’ container.
5. The ocean carriers have offered NO standard for electronic communication for shippers to carriers and for carriers to terminal operators.
6. The extra time needed to send data from shipper to carrier; carrier to terminal; terminal recognition of weights and green light to proceed will cut some export shippers volume

in half because of the extra time. This is lost revenue and sales for the U.S. exporter at a time when our exports are already down significantly.

7. The World Shipping Council and member carriers which are nearly all **foreign** owned, are sending communications to U.S. exporters that these amended changes are mandatory, even though it is clear that there is no legal basis for them to take that position. US shippers are being bullied with these guidelines offering no flexibility.
8. United States terminals have weighed in on this SOLAS issue and are now, in the case of Maher terminal in New York and at the Port of Virginia, threatening to refuse containers into their terminal without verified gross mass information.
9. The United States supply chain infrastructure is unique and different from other parts of the world. Our major terminals are not set up with certified scales like European ports and, as a result, US exporters would be burdened to move containers miles out of their routes in order to find scales.

The Solution:

Recognize the United States exporter is not the problem. There is no data to support that any changes to US current methods of reporting weights to the ocean carrier are needed. US exporters have offered to meet carriers in the middle, by offering to certify weights we can control, our gross weights, calling this Method 3 or a "Rational Method". We should not be required, however, to certify the weight of equipment that we do not own or lease and there is no infrastructure in place in the US to support the significant requirements that the carriers are seeking to impose. Our current weight reporting is already held to strict requirements for accuracy under The Intermodal Safety Act and timely filing of export data to Customs and Border Protection. We adhere to the requirements developed by The Safety of Life at Sea Convention adopted in 1994 by the International Maritime Organization and approved by member nations. We are not aware of any contentions that shippers in the US export trade have created any problems for the carriers or that compromise safety at sea.

Even assuming carriers are bound by the rules of their flag state, very few of those states have actually issued laws or regulations requiring the mandatory application of the VGM Guidelines. In any event, in the US, it is the Coast Guard that determines all safety requirements, and the USCG has most clearly determined that additional new rules are not required for safety purposes and that US exporters need not change their existing practices. The Coast Guard acknowledges that there are several ways to meet compliant weight reporting.

Summary:

- We appeal to this Committee to insist that carriers and shippers can meet with a sensible solution without adding cost to the already burdened US exporter. The Agriculture Transportation Coalition has offered a Rational Approach to meeting VGM. We have introduced the rational method of reporting weights to the carriers. This "Method 3" holds the shipper responsible for reporting the cargo weight and the ocean

carrier responsible for providing the weight of the container. Informally carrier executives have told us this would be the most efficient and reasonable approach.

- We implore this Committee to insist, legislatively if necessary, that current methods of cargo weight disclosure are compliant, as the Coast Guard has repeatedly stated. Further, any modifications must be agreed between carriers and shippers, in a mutually acceptable way, in a commercial setting.
- If ocean carriers continue to refuse to work with the US exporter community and insist that only their method of SOLAS compliance are permissible, we ask Congress to exercise its authority to review treaties.
- The World Shipping Council and OCEMA guidelines to the SOLAS amendment offer such dramatic and disruptive change in current shipping practices that it merits a full Rulemaking by the Coast Guard if the ocean carriers refuse to honor other acceptable and compliant forms of weight reporting by the shipper.
- This Committee should request the Federal Maritime Commission's opinion as to whether the continued collective effort by the carriers to enforce the requirements are consistent with the Ocean Shipping Act. For instance, is such action an unreasonable practice, since they are not required for any safety or other purpose and are not, according to the US Coast Guard, required by either US or international law?
- Similarly, we request the Federal Maritime Commission's opinion regarding the collective action of the carriers to refuse to accept cargo from shippers and Ocean Transportation Intermediaries unless this VGM is provided in the manner dictated by the OCEMA "Best Practices" a violation of the Ocean Shipping Act?
- Finally, all parties – shippers, carriers, ports and terminal operators in the United States could move forward to find solutions if this Committee would encourage the Coast Guard to issue written, public guidelines on the several acceptable methods to achieve weight reporting (including the Rational Methods suggested by the Agriculture Transportation Coalition and the many United States export shippers we represent).