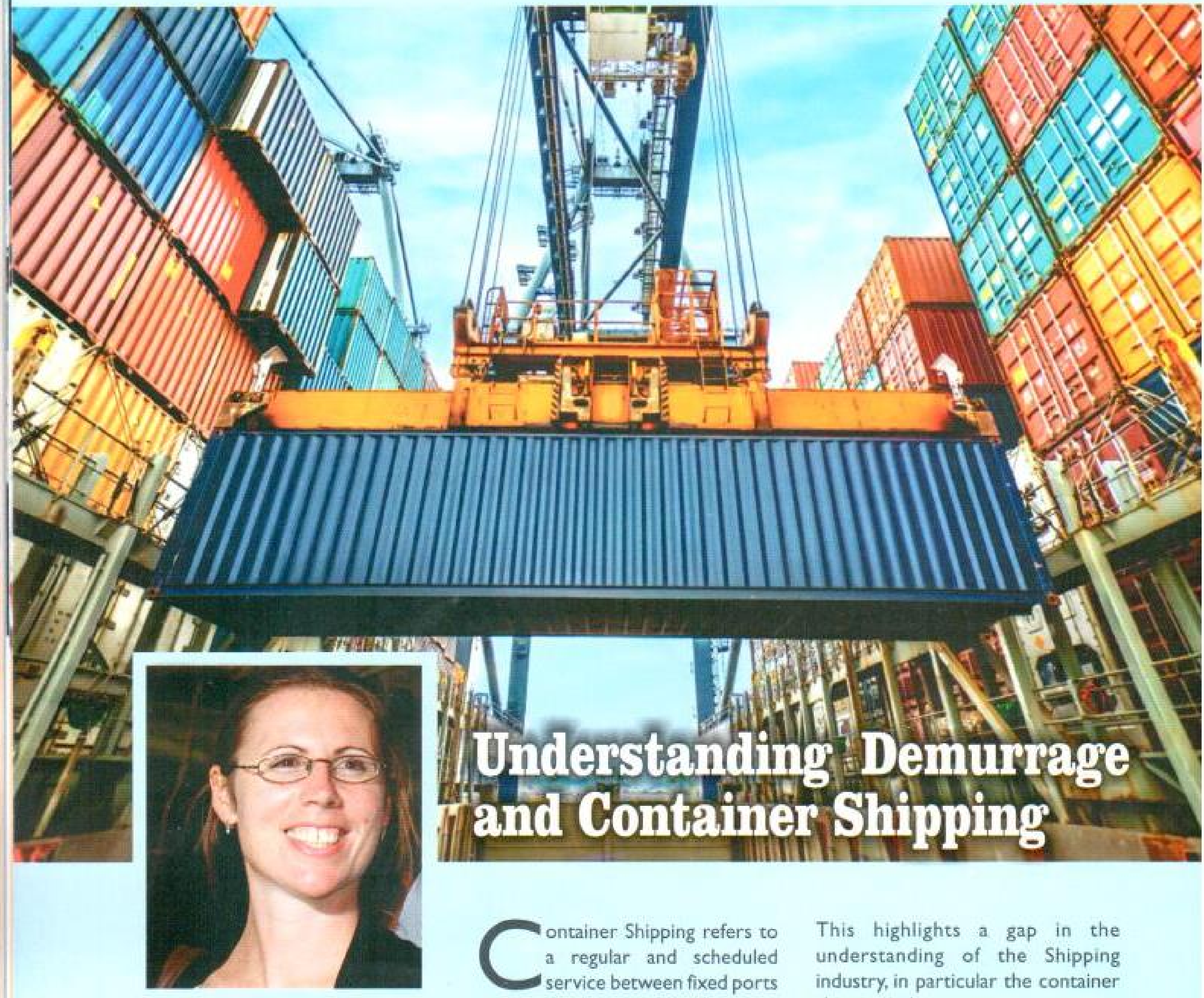

Understanding Demurrage and Container Shipping

Ms. Katy Aldrick, provides an insight into the economics of container shipping, specifically focusing on what demurrage and detention and why they exist.

Container Shipping refers to a regular and scheduled service between fixed ports and although there are RORO, steel and other liner services, container shipping is generally considered the king of liner shipping.

Unfortunately, inefficient supply chain systems, which significantly increase the cost of doing business, give importers a negative experience of the shipping process.

A recent Institute of Chartered Shipbrokers examiners meeting in London attended by this writer, revealed that around 50% of all students taking the 'Liner Trades' exam were based in Kenya.

This highlights a gap in the understanding of the Shipping industry, in particular the container shipping industry.

The concept of demurrage first came about when ship owners and charterers (owners of the cargo) signed agreements to transport cargo between two ports.

These agreements, known as Charter Parties, existed long before container shipping arrived on the scene during the late 1950s. Both parties had to agree to terms and if they failed to adhere to these terms, compensation for breaking the same was required.

Demurrage, in this case, is the charge payable to the owner of the chartered ship on failure to load or discharge the ship within the time agreed as per the contract.

The time allowed for the charterer to discharge their cargo is known as 'laytime' and if the charterer exceeds the time allowed, they are required to pay demurrage charges, being liquidated damages for breach of contractual terms.

Since the proliferation of container shipping, the concept of demurrage has been extended to compensate shipping companies when containers are not returned within the contractually agreed 'laytime' or 'free time'.

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This contract stipulates the terms of the transportation including the description or particulars of the goods to be transported, the mode of transport (which include sea freight, inland haulage and/or any other agreed mode of delivery of the relevant cargo to the agreed destination), the packaging of the consignment for transportation purposes and the handling of the goods from the time they are received by the shipping line to when delivered to its prescribed destination.

All these terms, including the type of packaging (which, for this purpose is the use of containers to transport the relevant cargo) constitute a carriage contract which is the service being rendered by the Shipping Lines.

As a fundamental term of the carriage contract, a key clause is the specification of the amount of time allowed for loading, unloading of cargo and return of the empty container to the nominated empty depot.

The grace period allowed is referred to as laytime or free time. The Shipping Line does not raise any charges to customers for containers held for this time of period. Nor does it charge for the use of the containers while on the voyage at sea.

However, if the lay time is exceeded, the importer compensates the Shipping Lines in form of demurrage payment which is liquidated damages for the Shipping Lines not being able to use the containers whilst they are in the possession of the customers. It is not in any way a payment for the use of containers.

It should be noted that demurrage does not constitute rent for use of property as there is no leasing contract between the Shipping Lines and its customers.

As demonstrated above, the contract is one of transportation of goods whose elements comprise packaging, loading, carriage, unloading, handling, return of storage material and, to the extent applicable, liquidated damages payable by an importer to the Shipping Lines for any delay in returning the containers used in transporting the goods.

In a perfect container supply chain the 'free days' are never exceeded and the carrier does not need to be compensated by the shipper/consignee.

When shippers/consignees agree to freight rates and 'free days', they need to understand the impact of these contractual terms, i.e, how many days they have been allocated to return the empty containers.

Where infrastructure or country administration systems cause delays in container pick up/return, it may be worth shippers looking at less risky options like using Bill of Ladings, rather than 'Merchant Haulage'.

Although the initial freight costs may be higher, demurrage rates are likely to be reduced as most of risks associated with infrastructure delays are transferred to the Shipping Lines.

This is because with 'merchant haulage' the responsibility of the Shipping Line ceases upon discharge of the container at the port, i.e, free days start at this point.

If we consider that 'prevention is better than cure' then clear import and export processes and infrastructure development are key contributors to creating transport efficiencies and facilitating the movement of goods in the supply chain.

What Kenya needs are clear procedures and systems covering all departments (Customs, KEBS, KPA, SGR etc.)that encourage trade. By reducing barriers to trade, the cost and risk of bringing ships or containers to Kenya will also be lower and Kenyan consumers will significantly benefit from reduced demurrage charges.

Ms. Katy Aldrick is the Chairperson of Kenya Ships Agency Association.