



## **EAST AFRICAN COMMUNITY**

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### **IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)**

#### **The Official Report of the Proceedings of the East African Legislative Assembly 92<sup>ND</sup> SITTING - FIFTH MEETING – THIRD SESSION – THIRD ASSEMBLY**

**Tuesday, 24 March 2015**

*The East African Legislative Assembly met at 2:30 p.m. in the Chamber of Deputies, Burundi National Assembly in Bujumbura, Burundi.*

#### **PRAYER**

*(The Speaker, Mr Daniel .F. Kidega, in the Chair.)*

*(The Assembly was called to order)*

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#### **COMMUNICATION FROM THE CHAIR**

**The Speaker:** Honourable members, yesterday evening, when we adjourned, we has reached a point of putting the question for the Bill to be read for the Second Time. Unless there is anything, I propose that I put the question to the motion.

Hon. Members, the motion is that The East African Community Elimination of Non-Tariff Barriers Bill, 2015 be read for the Second Time. I now put the question.

*(Question put and agreed to.)*

#### **THE ASSEMBLY IN COMMITTEE**

*(The Rt. Hon. Dan F. Kidega in the Chair)*

#### **BILL**

#### **COMMITTEE STAGE**

The East African Community Elimination of Non-Tariff Barriers Bill, 2015

Clause 1

**The Chairperson:** Honourable Members, the proposal is that Clause 1 be part of the Bill. Procedure, Hon. Mulengani.

**Mr Mulengani:** Mr Chairman, Sir, I look around and I notice that the Chairperson of the Committee of CTI, who is, actually, in custody of our report and proposed amendments that we received, is not yet in the House and we don't have the documents. Would it be procedurally correct that, maybe, you adjourn for some time, and we look up where he is. We ended a bit late in our meeting. Maybe they are putting together the final report with the clerk.

**The Chairperson:** Honourable Members, first of all I will start on, not necessarily a procedural matter but it is a serious concern. Yesterday evening, I adjourned the House to 2.30 p.m. and Hon. Members, this shouldn't have gone on record but I am left with no option other than doing so.

It is important that we take maximum advantage of our presence here. We should keep time and dispose of most of the business, which is before this House.

I am also aware that the Committee had meetings in the morning and members of the Committee are here. So, I expect the Chairperson to be around. Let me consult and then I will get back to you.

Hon. Members, I would encourage that, first, it is not a procedural matter.

Secondly, can a member of the Committee who could be in possession of the amendments that may be required proceed on behalf of the Chair while communication is being sent to him to be here? Thank you so much.

I now propose the question that Clause 1 be part of the Bill.

*(Question proposed)*

**Ms Byamukama:** Mr Chairman, Sir, I have an amendment which has been circulated on Clause 1 (2). The proposal is that we should delete this aspect of the commencement date but retain the first aspect, which is on the Short Title. And the marginal note should change accordingly.

Mr Chairman, I have also provided that the justification is that it is provided for under the EAC Interpretation Act. So, there is no need to include a clause that provides for such a date as Council may by notice published in the gazette a point since it is a Council Bill and financial implications should have been taken into account. It might fetter operationalisation of this law and, therefore, and also become an NTB. This has been circulated; I beg to move.

**The Chairperson:** Seconded by Hon. Patricia and Hon. Kiangoi. Yes, Hon. Dora, would you still want to give further justification? But I thought you have done it really and it has been earlier circulated. Chair, Council?

**Dr Sadalla:** Thank you, Mr Speaker, Sir. I don't have any objection to that. But I think we will have to have a consequential amendment. Maybe No. 19 that it will be in operation once assented instead of giving a Council decision. So, once it is assented to, it is going to be operational.

**The Chairperson:** So, I take that Council has conceded to the amendment as moved by Hon. Dora and I will put the question to the amendment as moved by Hon. Dora on Clause 1 (2).

*(Question put and agreed to.)*

*(Clause 1, as amended, agreed to.)*

Clause 2

**The Chairperson:** Hon. Members, the proposal is that Clause 2 be part of the Bill.

**Ms Byamukama:** Mr Chairman, Sir, I have an amendment in relation to the word “institution.” The Bill proposes that the word “institution” should mean a ministry, department or agency of a Partner State.

I would like to propose that we should delete this word “institution” because as you are aware, Mr Chairman and Hon. Members, under the Treaty we have organs and institutions of the Community under Article 9.

**The Chairperson:** Honourable Member, maybe you move, you are seconded and then you justify later.

**Ms Byamukama:** Okay, thank you.

**The Chairperson:** Seconded by Hon. Ogle, Hon. Kessy and Hon. Mulengani. Proceed, Hon. Dora.

**Ms Byamukama:** Thank you very much, Mr Chairman for your guidance. The justification is that under the Treaty, the word “institution” has a different meaning and when you look at Article 9, we have organs and institutions of the Community. Therefore, when you bring this word “institution” in this particular Bill, it may not serve any useful purpose and since this is a regional law, it may cause misunderstanding.

I would like to propose that in case we want to refer to national institutions, then we could refer to them as such or more specifically by whatever the exact name that is intended is. This is the justification, which has been circulated, Mr Chairman and Hon. Members.

**The Chairperson:** The proposal is open for debate. Chair, Council?

**Dr Saadalla:** Thank you, Mr Chairman. Though I don't have the Counsel to the Community here, I could act as one. About this amendment, I tend not to agree because institution in this Act is clearly defined as a ministry, department or agency of the Partner States. But according to the Treaty, if you go to page 6, it says that: “*Institutions of the Community means the institutions of the Community established by Article 9 of this Treaty.*” And when you go to Article 9, it clearly says that: “*These institutions are the Summit, Council, and Coordinating Committee, Sectoral Committee, East African Court of Justice, East African Legislative Assembly, Secretariat and such other organs as may be established by the Summit.*” So, I think there is a discrepancy of the two.

The institutions meant in this Act are the ones which are clearly stipulated in the function on this Act and not related to those in the Treaty.

**Ms Byamukama:** Mr Chairman, Sir, maybe the Chair, Council of Ministers can point out where this word is used in the Bill so as to warrant specific interpretation that may make better meaning. But where this word, institution is not used over and over again and has the potential to bring about confusion because institution as defined in the Treaty is a Community institution and is clear under Article 9.

I am not beholding to this but I am considering a situation whereby we are providing interpretation for a word, which is not repetitively used and which has the potential to cause some degree of confusion, which may be unnecessary. So, maybe if he can highlight the area

where the word institution has been used several times to warrant interpretation, then there is no need for me to hang onto it.

**Dr Sadalla:** Thank you, Chair. I humbly request the Member to go to page 6 under Clause 6, where it says, "*Prohibition of certain activities by public officers in institutions of Partner States*" for example Clause 6 (1) says, "*A public officer of any institution of the Partner State shall not engage in any activity, which is not authorised by the laws of the Community or of the Partner States.*"

Again when you go to 6 (2) "*A Partner State whose public officer or institution engages in any of the activities in sub-section 1 shall compensate ...*" and when you go to 7(d) It clearly say that: "*The functions of the national monitoring committee shall be to:*

*(d) Identify on its own initiative a Non-Tariff Barrier that may exist in the Partner States and notify the concerned institution or public authority of the Partner States.*"

I think, Mr Chairman, having said this, the word "institution" in this Act is meant to talk about institutions of the partner States and not those of the Community.

**Mr Mulengani:** Thank you very much, Mr Chairman. When you look at the Treaty, under institution, they define it as institutions of the Community. If we are, therefore, to borrow that wording, I would propose that we then amend this to read "Institutions of Partner States" because here, the institution we are referring to in the Treaty is reading as "*Institutions of the Community.*"

**Mr Mwinyi:** Thank you, Mr Chairman. Institution is defined in the Bill. If you look at the definition phase in Clause 2, it says, "*Institution means a ministry, department or agency of a Partner State in this Bill.*" So, the Chair, Council is correct in dealing with it.

**Mr Taslima:** Thank you, Mr Chair. I am together with what Hon. Mwinyi has said because once a particular statute has already given the meaning to be used in the document throughout, then it means that. And the one in the Treaty is consistently saying, "Institution of the Community" and here you find everywhere it is written "institution of a Partner State" just like in 6 and 7. So, I think it is okay to leave them the way they are.

**The Chairperson:** Maybe the mover would like to say something. Yes, Hon. Dora, first-maybe she is conceding. Hon. Ogle and Hon. Dora you can't have a bilateral there.

**Ms Byamukama:** Thank you, Mr Chairman. I actually was waiting for you to guide us because both of us stood - (*Laughter*). Mr Chairman, with all due respect, the colloquial language of the East African Community is such that when you say the word "institution" it is understood to be that under Article 9.

I would like to also allude to what Hon. Mulengani says because the Treaty interprets institutions of the Community and that it very clear. I think, for me, what would have made better sense would, maybe, have been to say "Institutions of Partner States" and then continue. But since it is already in the definition of the word institution in the clause, I do not want to belabour this point. I, therefore, come to the understanding but I know for a fact that I just wanted to have clarity because the minute you read this, that is what comes to your mind. I thank you.

**Mr Ogle:** Thank you, Mr Chairman. Now, the whole idea of making laws is to ensure that there is clarity; there is no conflict and they must be straight forward. Now, the import of this word “institution” cannot be left hanging. Whether it refers to this or that. It must be-

**The Chairperson:** But Hon. Ogle, the mover has conceded.

**Mr Ogle:** It must be as defined in the Treaty. What I am saying is that the proposal here is for the deletion of the word “institution.” If that was to happen and all over in 6, 7 and 8, or wherever else it is repeated, it may not have any impact on those clauses. So, I think we had better go with what she has proposed to delete the word “institution” throughout.

**Ms Byamukama:** The clarification is that since it is me who brought up this point and nobody had seen it before, I think the point was initially to delete. Deleting might, however, no longer make sense especially based on the argument which was brought about by Hon. Mulengani.

I would like to read to you the Treaty. It defines institutions of the Community in the interpretation, “*This means the institutions of the Community established by Article 9 of this Treaty.*” Therefore, if we are to retain the word “institution” we could, as Hon. Mulengani suggested and improved on what I had said because I had proposed a deletion because it may cause confusion, say, “institutions of Partner States” and we could still repeat that these mean, and then go to what has been said, “a ministry, department or agency of a Partner State.” So, I think this would make a better law in the circumstances. That is where I am, Sir. Thank you.

**The Chairperson:** Just before I give the Hon. Valerie who is rising. In the Treaty, it says, “Institution of the Community” but in the Act, it is just “Institution.” The two are categorically different. Yes, Hon. Valerie and then I come to Hon. Martin.

**Ms Nyirahabineza:** Thank you very much, Mr Chairman. You are right in regards to the definition provided for under the Treaty but I have tried to peruse through the whole Bill and wherever it is written “institution” it is qualified as “institution of the Partner States.” So, that is why I second the idea put forward by Hon. Dora in that it is clearly specified that “institution of the Partner State” and not institution only. Thank you.

**Mr Ngonga:** Thank you, Chair. I don’t know in what circumstances the word used in a particular statute and which has been given a particular definition can cause confusion because it is not going to be exported to any other statute. It won’t be exported to the Treaty or anywhere else. This definition is specific for this particular law. So, I really don’t understand where the confusion will come from. (*Applause*)

**The Chairperson:** Thank you, Hon. Martin. I think the matter has been debated enough. I am going to propose a question to the motion.

**Ms Byamukama:** There is no need for the question. We were still debating. The first aspect was whether we should delete. The second aspect was whether we should include the word “institution of a Partner State” and now the third position is that after all, as the Chair of the Council said, and as hon. Valerie said, wherever institution is used, it is of a Partner State. Therefore, there might be no confusion brought about.

So, in view of all these arguments it is alright. It can remain as is.

**The Chairperson:** Thank you so much. Hon. Members, the mover has conceded. I now put the question that Clause 2 be part of the Bill.

*(Question put and agreed to.)*

Clause 3

**The Chairperson:** Honourable Members, the proposal is that Clause 3 be part of the Bill.

**Ms Byamukama:** I had an amendment but I don't know – I thought these amendments were discussed in the Committee. Actually I would have loved the Chairperson to make some comments on it because now I am looking like it is me against the world and I don't like that. But let me move it because I resent these amendments to the Clerk, the Chairperson and to the members of the Committee. I don't want to look as if I am a busy body whereas the Committee could have looked at them comprehensively.

So, I would rather the Chair of the Committee comes up – these are views circulated to you. You know the work I put into the Bill and I don't want my work to look as if it is not very welcome in the circumstances. But I know it is very constructive. Thank you.

**The Chairperson:** Honourable Dora, I think there is no cause for any worry. You have absolute right as a Member to move as many amendments as you wish on a Bill.

Secondly, where we had reached as the House, the Chair of the Committee had completed his work and the Committee also had completed its work. We are at the Committee Stage where Members move amendments by way of submission of their draft amendments to the Clerk and we have received your amendments as per this Bill. So, you will go ahead and move them as and when the clause arises. That should not be a problem. So, please, move on Clause 3.

**Ms Byamukama:** Thank you for your guidance, Mr Chairman, Sir. I hereby propose that Clause 3 reads as follows:

- (a) *The object of this Act is to enhance and facilitate trade by providing a legal framework for the removal of Non-Tariff Barriers in the Community;*
- (b) *Providing for a mechanism for identifying and monitoring the removal of Non-Tariff Barriers within the Community;*

And (c) could remain as it is. This is my proposed amendment.

**The Chairperson:** Seconded by Hon. Ndahiro and Hon. Ogle. Do you wish to give more justification, Hon. Dora or you think I should open debate?

**Ms Byamukama:** The justification is based on the memorandum. When you look at the memorandum of the Bill, it says, *“This Bill is to provide a legal mechanism for the elimination of identified Non-Tariff Barriers in the Partner States.”* And then it goes ahead in the latter part and states that: *“The Partner States undertook to formulate a mechanism for identifying and monitoring the removal of Non-Tariff Barriers in the respective territories.”*

Finally, the last sentence of the memorandum is that: *“The Bill seeks to establish a mechanism for identifying and monitoring the removal of Non-Tariff Barriers within the Partner States.”*

My concern – I think I have put the justification here - is that in Clause 3 as it is, there is provision that the Act will enhance and facilitate trade by:

- (a) *Removing conditions that affect and distort trade in goods within the Community.”*

Now, when you talk about “*conditions*,” we have not been able to capture the aspect, which is particularly removal of Non-Tariff Barriers, which is specifically provided for in the memorandum.

“(b) *Is to create an environment, which is conducive to trade in the Community and the effective movement of goods within the Community.*”

I would have preferred to provide that the object is to provide for a mechanism to identify and monitor the removal of Non-Tariff Barriers within the Community with a hindsight that there are existing ones and there are those yet to come. Therefore, this will help us capture that particular objective.

On “(c) *Removal of restrictions that make importation or exportation within and outside the Community difficult or costly,*” is okay because I think this is also captured in the WTO schedule, which is part of the Bill.

So, basically, my concern is that I really wanted us to capture those words – the aspect of Non-Tariff Barriers and the aspect of the mechanism. Maybe you could also say, “The object of this Act...” because when you say “objective...” it is not okay. Thank you.

**The Chairperson:** Thank you, Hon. Dora.

**Dr Saadalla:** Thank you, Mr Chairman. Thank you, Hon. Dora but I am sorry that I can't accept this amendment because the way it is written within the Bill is more specific. It is providing the legal framework for removing Non-Tariff Barriers in the Community. The meaning of having this Act is to provide a legal framework. So, by saying “legal framework” means everything that is inside – whether Article and everything. So, this Act by itself is a legal framework.

Now, what we are doing is looking for mechanisms on how we write, how we can provide this legal framework to be practicable within our Partner States. And it is clearly stipulated in the memorandum. So, in the objective there, is that we give the conditions. So, I urge the House to leave (a) and (b) the way they are because the legal framework is this one. And if at all need arises, we can accept to amend this provision of the legal framework by amending the Long Title of the Bill and not the content. Thank you, Sir.

**Ms Pareno:** Thank you, Mr Chairman. I was trying to compare the provisions of 3 and the proposed amendments. And when I look at the first proposed amendment, it actually lumps up what has been proposed in 3. If you look at 3 (a), it is so specific; it is gone ahead to talk about conditions; it has gone ahead to talk about how it affects; how it distorts. So, it has gone to specifics of addressing the Non-Tariff Barriers.

So, if you just talk of legal framework, to me that is too wide. The Bill has put it in such a way that it is so specific and it is actually addressing the Non-Tariffs directly. Conditions are normally the Non-Tariff Barriers that we are talking about.

Then when you go down to (b), it talks about the environment; talks about the conducive environment and then goes ahead to talk about effective movement of goods. To me this is more specific than just terming it like a legal framework.

Yes, it is a legal framework but we have gone down specifically to identify those small conditions; those small effects; those small conducive environments and the restrictions that need to be removed.

So, I think the legal framework is already provided for in terms of specifics and I think it is just good as it is.

**Dr Nderakindo:** Thank you, Mr Chairman. Mine is very minor. It is that we either stand with object or objective. I know in many of the legal papers they use object but here in the memorandum it is written “object” but in Clause 3, it is written “objective.” I prefer objective but I know the lawyers will say, object. So, we need some consistence here. Thank you.

**The Chairperson:** Thank you so much, Hon. Kessy. I think the technical draftspersons and the Council will bear guidance on this. The question of objective versus object and then now the general phraseology as presented by Hon. Dora.

**Mr Kiangoi:** Thank you, Mr Chairman. I stand to support the first amendment in (a) because it is wider; it covers the general requirements; the objects of this Act but I would wish to submit that we do not remove (b) as given in the Bill so that the first amendment that was given becomes (a) and the (a) that is there, becomes (b) and so on downwards. This is because I agree that we need to specifically point out what actually the object of the Bill should be and (a) and (b) provide for that.

But it is important to provide the first amendment. It would do no harm because you begin with a general statement and then you go down into specifics.

**The Chairperson:** Yeah, Hon. Kiangoi has introduced a new suggestion in agreement with what Hon. Dora has proposed. But as a new (a) and then maintaining the (a) in the Bill up to (c).

**Ms Hajabakiga:** Thank you, Mr Chairman. I am really surprised because this was a question of long debate in the Committee in the morning and I had expected the Chair to stand and support the Committee’s proposal because yesterday it was adjourned so that we could go back and see what their amendments were.

Let me confirm that what we agreed is what Hon. Kiangoi has just provided that we take the amendment of Hon. Dora by including a new (a) and then keep the other three and they become four. Thank you, Mr Chairman.

**The Chairperson:** Maybe in defence of the Chair of the Committee before he takes the floor, Hon. Mbidde who is the Chair is in order to be seated because where we were by yesterday when we adjourned was at a point of moving to this stage. And we moved and any amendments were to come to the Clerk as per the provisions of our rules and not back to the Committee. Otherwise, hon. Mbidde, please make your clarification.

**Mr Mbidde:** Yes, Mr Chairman, just in addition to how you have ruled, the manner in which the Committee members need to move is by respectively Committee members coming up with suggestions on the amendments.

We no longer have a duty as a Committee to receive amendments; we did not have that duty according to the law and I could not have it by a manner in which is not known to me.

So, under Rule 68, members are free to propose these amendments including the original proposers of the amendments not the Chair. I thank you, Rt Hon. Chair.

**The Chairperson:** Okay, Hon. Members, let us go to the proposed amendments. The proposal is that Hon. Dora’s amendment becomes a new (a) and then the (a) and (b) in the Bill remain



as they are because it provides a good opening remark for (a) and (b). That is the proposal from Hon. Kiangoi.

**Ms Byamukama:** Mr Chairman, Sir, I am very agreeable to that and actually my proposals don't have to stand as two. They can be combined because it could be for the object of the Bill to provide a legal framework and mechanism for the removal, identification and monitoring of Non-Tariff Barriers. I think this would combine the two ideas in my two proposals.

Mr Chairman, you are conferring with Mr Clerk and I see he has a problem of capturing what I am saying.

I am saying that I am agreeable to that what has been proposed by the Committee and I want to thank the Committee members for informing me because this was before them so it makes my work easier. So, what I would like to say is that we can combine the two ideas and say that this is for providing a legal framework and mechanism for the removal, identification and monitoring of Non-Tariff Barriers. And then the rest can remain as it is because that way it will have captured what I want and the word should be "object" and not "objective." So, I am going to write this and send it to the office again. Thank you very much.

**Dr Sadalla:** Thank you, Mr Chairman. I agree with what Hon. Kiangoi said. We can put this amendment as (a) and continue with the others. And about object and objectives, we don't have any problem. They are all the same.

**The Chairperson:** Chair, can you speak to the microphone and a little bit louder.

**Dr Sadalla:** Thank you, Mr Chairman. I said that we agree with putting the amendment of Hon. Dora as (a) and continue with the others. There is no problem with us. It seems to be a very good opening for the rest; it is being very specific.

On the issue of objective and object, we meant objectives. So, you can just replace them. There is no problem with us. It is just a crafting style.

**The Chairperson:** Honourable Members, the Chair is agreeable to the amendment as proposed by Hon. Dora and amended by Hon. Kiangoi. I now put the question.

**Mr Zein:** Thank you, Sir. I think it is much easier to just put a question on the latter amendment. That is what procedurally it will be.

But there was an amendment by Hon. Dora, to which there was another amendment to amend the amendment by Hon. Dora by Hon. Kiangoi. So, that is the one, we should be the question to. I just want clarity?

**The Chairperson:** Hon. Zein that is exactly what I said. I said that Hon. Dora moved but an amendment as moved by Hon. Kiangoi onto the original amendment by Hon. Dora is what I am putting a question to.

**Mr Zein:** Much obliges, Sir.

**The Chairperson:** Okay, thank you. Hon. Ogle?

**Mr Ogle:** Mr Chairman, you know what Hon. Dora was suggesting a fresh instead of the amendment moved by Hon. Kiangoi seeking to capture all this plus her amendment as a continuation of all these provisions. What she suggested lastly was a compound form of where here amendment could have been captured in what is provided for in (a) now.

**Ms Byamukama:** Mr Chairman, you are proceeding very well and I think you should go ahead and put the question. The question is on this issue. We have proposed that the first part should read as follows: *“The object of this Act is to enhance and facilitate trade by:*

- (a) *Providing a legal framework and mechanism for the removal, identification and monitoring of Non-Trade Tariff Barriers.”* And then the rest will remain as is.

This is for clarity.

**The Chairperson:** Thank you so much, Hon. Dora. I now put the question.

*(Question put and agreed to.)*

*(Clause 3, as amended, agreed to.)*

Clause 4

**The Chairperson:** Honourable Members, the proposal is that Clause 4 be part of the Bill.

*(Question put and agreed to.)*

Clause 5

**The Chairperson:** Honourable Members, the proposal is that Clause 5 be part of the Bill.

**Mr Mbidde:** There are proposed amendments, Mr Chairman from Hon. Dr Ndahiro that I undertake to – they have just been circulated. Maybe the Chair, Council needs to get a copy. He hasn't yet got one.

**The Chairperson:** I have also just received it now. So, can it be please, circulated very fast? Yeah, proceed, Hon. Mbidde on behalf of Hon. Dr Ndahiro.

**Mr Mbidde:** It is very short. Hon. Dr Ndahiro seeks to amend 5 (1) by adding the words “and any other discriminatory practices,” immediately after the word “Non-Tariff Barrier.” This is at the end of 5 (1)

**The Chairperson:** Seconded by Hon. Yves. You can go ahead and justify. Maybe Hon. Dr Ndahiro should give his justification.

**Mr Mbidde:** Much obliged.

**Dr Ndahiro:** Thank you, Mr Chairman. I feel that that Article could not be complete without considering that there are people with special needs who would find it difficult if conditions are kept normally and I feel that the Treaty provides for non-discriminatory principles together with the Common Market. So, it is in that line that I thought that non-discriminatory practices should be barred because not only are they provided in the legal instruments of the Community but also in the international agreements, which our Partner States are signatory to.

So, that is to cater for situations whereby people with special needs would be catered for in trade related activities.

For instance, you might find that in the Customs procedures, they have not provided for persons with special needs. If I approach anybody at a station and I am expected to fill a form or sign something, if that provision or guidance has not been given and I am left alone, I will be

disadvantaged. That is why I thought it was necessary to amend that particular Article. Thank you, Mr Chairman.

**The Chairperson:** Thank you, Dr Ndahiro.

**Mr Mathuki:** Thank you very much, Mr Chairman. Mr Chairman, I appreciate the justification given by Hon. Dr Ndahiro, which is very important. I just want to be clarified what—(*Interruption*)

**Mr Mwinyi:** Mr Chairman, is my honourable friend in order to be contributing from the gallery? (*Laughter*)

**The Chairperson:** Honourable Members, I think the practice while we are seated in this Chamber is that the middle column here is gazetted for the Members as part of the House. Then on my right, is for officials and our technical team. And on the left is for our special guests. I advise that Members should sit where they belong and special guests should sit where they belong and staff also sit where they are supposed to be. (*Laughter*)

**Mr Mathuki:** Mr Chairman, I think I am guided by that. As I do that, those are some of the in-house issues, which possibly – (*Interjections*)-

**The Chairperson:** The Hon. Peter Mathuki has the floor while he adjusts his seat.

**Mr Mathuki:** Thank you very much, Mr Chairman for this guidance and of course Hon. Mwinyi for inviting me back to the House.

Mr Chairman, I appreciate - I was only saying I appreciated the justification given by Hon. Dr Ndahiro, which is very important. But I think it is also important that we are very clear when we are saying, “discriminatory practices.” It is only fair that we know what they constitute for purposes of making it very clear because the essence of law is clarity.

So, appreciating what he has said and his contribution in the justification, what does this discriminatory practice entail? That is my clarification so that it becomes clear and it if can be clarified.

**The Chairperson:** Thank you, Hon. Mathuki. Hon. Dr Ndahiro, the clarification is required from you.

**Dr Ndahiro:** Thank you, Mr Chairman. I think the Treaty is clear and the Common Market Protocol is clear. If you want a dictionary definition, maybe that is another matter.

But discriminatory practice is any practice that leaves a section of people or an individual from the ordinary practice. Thank you, Chairman.

**The Chairperson:** I hope the Hon. Member has been clarified to. Chair, Council, you were rising in response to this matter of the amendment as moved by Hon. Ndahiro on Clause 5.

**Dr Sadalla:** I agree with the amendment but can Hon. Ndahiro qualify this discriminatory and perhaps change it into marginalised and persons with disability to be much more clear. Do you agree with it?

**The Chairperson:** The Hon. Minister is saying the Hon. Dr Ndahiro could make this clearer by making it specific that “practices against persons with disability.” That is his suggestion. Hon. Martin first and then I go back to Hon. Ndahiro.

**Mr Ngoga:** Thank you. Let me first concede that I am not very conversant with the provisions he is referring to in the Treaty but I also share the view that while his idea is noble, the phrasing doesn't capture it properly. So, possibly the specific reference to the provisions in the Treaty could serve the purpose.

For example, by saying, "and any other practices inconsistent with..." and then we refer to those provisions in the Treaty because that is where he is driving the point from.

**The Chairperson:** Thank you.

**Dr Ndahiro:** Thank you, Chair. I leave it to the experts for drafting purposes but I had also moved under the general provisions two amendments – two new Articles that would clarify that.

**The Chairperson:** Hon. Dr Ndahiro, let us dispose of what has been moved and then we shall go to that when it has been moved.

**Dr Ndahiro:** I concede, Chairman.

**The Chairperson:** I take it that the Chair, Council of Ministers has conceded to the general amendment and then technically advised and the drafting is going to reflect the specific reference as highlighted by Hon. Martin. But Hon. Valerie has something to say.

**Ms Nyirahabineza:** Thank you very much, Mr Chairman. I support the proposed amendment brought by Hon. Ndahiro but I think that if we go to Clause 4 (a) where it is written that: "...the World Trade Organisation categories set out in the Schedule, which are applicable to the Partner States ..." I think that maybe the WTO came up with a whole set of those NTBs including the disability issue. Maybe if we could borrow whatever is written in that document?

**The Chairperson:** Honourable Valerie is moving that this provision is good but can be moved – but I think the guidance was taken earlier on. I don't think you are moving contrary to what I had guided earlier on. And I think we just put the question that the amendment as moved and restructure by Hon. Martin – Hon. Dr Ndahiro moved an amendment under Clause 5 and the amendment moved by Hon. Ndahiro is amended by adding "any other discriminatory practices." And then Hon. Martin added that it could be in specific terms and made his amendment.

**Mr Mwinyi:** Thank you very much. If I may add upon Hon. Ndahiro's proposed amendments, "...any other discriminatory practices as defined by the Common Market Protocol." The Common Market Protocol defines discriminations.

**Ms Byamukama:** Mr Chairman, Sir, I have the Protocol on the Establishment of the East African Community Common Market but there is no definition of discriminatory practices. I have the Act but it also doesn't also define discriminatory practices.

But I would like to say very quickly, and in line with what Hon. Martin has said. When you look at the general undertaking as to implementation, which is provided for under Article 8 of the Treaty, you will find a provision under 8 (1) that: "*The Partner States shall- (c) abstain from any measures likely to jeopardise the achievement of those objectives or the implementation of the provisions of this Treaty.*" I believe and I trust that discriminatory practices would be such a measure and, therefore, this could have been the spirit upon which the Hon. Dr Ndahiro may have proposed this amendment.

I hope this will help us refine what has been proposed and hopefully maybe we can craft an amendment which would maybe say - because I want to be constructive - when you look at this Article, you could maybe say, “A Partner State shall not engage in trade practices, customs, procedures or impose any other measures that constitute Non - Tariff Barriers and are likely to jeopardise the achievement of objectives of the Treaty.” That is one thing that could maybe capture. But if not, I think we need to be – I have just made my proposal and I think this could maybe help us come to capture the idea of Hon. Ndahiro. Thank you.

**The Chairperson:** Thank you so much. Hon. Ndahiro, the debate is in agreement with your proposal but they want the text to be clear and reflect the provision of the Treaty. Can’t any Member help and clearly redraft the provision, which is enjoying some support from Members?

**Mr Mbidde:** Mr Chairman, the Treaty is particular on discriminatory practices although they are embedded under Article 6 (d) where you are likely to look at equal opportunities and gender equality.

In my opinion, let the Members look at the provisions there under because this is a particular reference to Partner States while fulfilling objectives of the Community. And that takes us close to the submissions by the Chair, Council and of course which was the fear by Hon. Mathuki.

When you leave it hanging as discriminatory practices, it would extend between Partner States that may feel discriminated against.

The import of Hon. Ndahiro’s submission, in my opinion, relates very well with his other submission under general provisions. So, I would like Members, and Hon. Ndahiro also, to consider both to particularly mention marginalisation and specify them or we shift it to general provisions that will create a principle of the operation of this Act. The general provisions of which are still submitted by him when you look at the proposed amendments at the latter end.

**The Chairperson:** Thank you, Hon. Chair of CTI. Hon. Ndahiro, the suggestion from Hon. Mbidde is that we move your amendment to fit under the general provision and shall come together with that when we eventually move the amendments under the general provision. Do you concede?

**Dr Ndahiro:** Mr Chairman, can we stand on that particular Article until we get there and then revert to it?

**The Chairperson:** Honourable Members, based on the un-clarity of the discussions going on, the Hon. Member is moving that we stand over this particular clause and we come back to it later.

Seconded by Hon. Zein. I put the question that we stand over Clause 5 and come back to it later.

**Mr Mwinyi:** Thank you, Mr Chairman. I will propose an amendment to Clause 6 (2) to read as follows:

*“A Partner State whose public officer or institution engages in any of the activities in subsection 1 shall compensate the affected party for the loss caused by that public officer or institution as maybe determined by the East African Community Committee on Trade Remedies within 90 days.”*

**The Chairperson:** Hon. Mwinyi, Members would like to have a copy – did you manage to circulate that amendment to a few of them?

**Mr Mwinyi:** Unfortunately, I had not. We did it in the Committee but the timing wasn't enough for the Clerk to circulate.

**The Chairperson:** Has the Chair, Council of Ministers got a copy and the Chair of the Committee?

**Mr Mwinyi:** No. The Chair, Council has not yet got a copy.

**The Chairperson:** But any way the rule provides that you give it to me. So, you can proceed and read it clearly for Members to comprehend.

**Mr Mwinyi:** I will read it clearly – Chair, Council has an idea but not the specifics. So, he may have other issues. As I said, I am reading again:

*“A Partner State whose public officer or institution engages in any of the activities in sub-section 1 shall compensate the affected party for the loss caused by that public officer or institution as maybe determined by the East African Community Committee on Trade Remedies within 90 days.”*

A further sub-section; sub-section (3):

*“Upon failure to resolve the dispute within the stipulated time frame, the aggrieved party may seek redress form the East African Court of Justice.”*

Honourable Chair, I beg to move.

**The Chairperson:** Seconded by Hon. Mulengani, Hon. Yves and Hon. Patricia. But Hon. Mwinyi, your text to me here said within 60 days. I don't know whether it a handwriting crisis or what? Which is which?

**Mr Mwinyi:** It is 90 days, Hon. Chair.

**The Chairperson:** Okay, proceed and justify.

**Mr Mwinyi:** Thank you very much, Hon. Chair. The provision as read as is in the Bill stipulates that “... as may be determined by the Council.” The practicality of this, as we all know how the Council works, is infeasible. The idea is to have a robust institution which is a creature already in existence under Article 24 of the Protocol for the Establishment of the East African Community Customs Union. And it is referred to within this Bill.

If I may get an extract of the Protocol, Article 24 stipulates as follows: *“For purposes of this Protocol, there is hereby established an East African Community Committee on Trade Remedies to handle any matters pertaining to trade disputes and the Committee shall be composed of nine members competent in matters of trade, customs and law.”*

Here is a body with specific mandate to deal with these issues. It should be given that responsibility to address those matters and thereafter, if the aggrieved party is not happy with that decision, the East African Court of Justice has recently been given extended jurisdiction on trade matters and disputes and this would be an opportune time for members in the private sector and all those who are aggrieved to proceed to the East African Court of Justice as a second resort.

So, here is a body, which is a creature of the East African Customs Union which we should give an opportunity to do what it is supposed to do as opposed to giving the Council adjudicatory power, which; one, based on the activities and the number of times that they meet, will not be feasible.

Two, they are not competent to deal with numerous numbers of disputes that will arise as a result of Non-Tariff Barriers throughout the East African Community. I beg to submit, Mr Chairman.

**The Chairperson:** Debate is open on the proposal as presented by Hon. Mwinyi.

**Mr Zein:** Thank you, Mr Chairman. I stand to support the amendment based on two fundamental reasons. The first one is that this proposal doesn't take away the right of Council to act. The Council will be given the first opportunity to act.

But this proposal, which is my second fundamental reason, this proposal says that in case the Council doesn't act or acts in a way that doesn't satisfy the affected party, then the affected party has recourse to the East African Court of Justice. For me, this second reason is sound and consistent with Article 6 for the Establishment of the East African Community and is consistent with good practices all over the world.

It also recognises that sometimes it is important to remove a matter that cannot be resolved by politicians and those who have been appointed by the Executive to find an independent arbiter who can then bring this matter to a closure. So, I submit, Mr Chairman.

**The Chairperson:** Hon. Peter Mathuki.

**Mr Mathuki:** Thank you, Mr Chairman. I also support the amendments but my problem with it is where Hon. Mwinyi says the EAC Committee on Trade or something like that. I thought this is a structure that reports to the Council. Therefore, if it is a report that is taken to the Council, it is the Council that is taking responsibility on behalf of the Partner States.

So, I thought that it should be left at determination by the Council. So, whatever this Committee does, will then report to the Council and then Council will take responsibility. So, I agree with the other amendments but on this one of replacing Council with this Committee, I am not very clear. I feel that we may wish to relook at it and see whether we should retain the Council to take responsibility since this Committee, which is of course important but then, reports to Council and then Council takes responsibility on behalf of the Partner States. I submit.

**Mr Sebalu:** Thank you very much, Mr Chairman. I do believe that this is a very good provision in terms of creating deterrent measures to reign in erratic public officers who may cause problems along the way.

I specifically support the aspect of a timeframe. Talking about 90 days is a good idea so that whatever remedy has to be made, must be done within a given timeframe. And this in itself will also make it a deterrent measure to the officers themselves.

But going into the specific details of how it will be undertaken, I think we need to appreciate the principle where the Council can take responsibility. Giving them a timeframe also brings in an element of ensuring that the affected party is handled appropriately.

But the details could be worked out in terms of the technical capacity available to deal with the matter because the Council can assign any competent officers within to deal with the matter.

I am particularly happy about the timeframe so that whatever and whoever does it under the instructions of Council, it has to be resolved within a given timeframe so that when people are taking decisions in their public and official responsibilities, they are mindful that the decisions that they do take can have effects that can bounce back on the after the Council is petitioned regarding an individual that is disadvantaged.

So, I support the aspect of the timeframe but I believe that the responsibility can remain. They can internally, in terms of specific workings, see how best it can be done.

**Ms Pareno:** Thank you, Chair. I think this is really a good amendment looking at what we are talking about and the provisions of this particular section. This is actually the core of this particular Bill because as we sit in the Legal Committee, as we normally go to the Partner States to find out how our laws are being implemented, we find that most of our laws are just there not being enforced and there is no express provision for proper enforcement.

But I think that this is one such provision that we will think of in terms of this particular law and in future when working on any other law, if allowed, because it means that for once we have a provision that enforces this particular law. You break it, then you should have some punishment for it.

Under normal handling of our laws, a law is supposed to be there to guide and when you break it, you have to be punished for breaching it. But it has not been like that in most of our Community laws. So, I am happy about this particular provision because it actually ensures the enforcement of this particular law and I can assure you this will take us forward in terms of the Non-Tariff Barriers. Thank you.

**Ms Byamukama:** Mr Chairman, Sir, I support this proposal. It is a brilliant proposal and I think apart from the objects, this is very important because it helps us with the issue of enforcement.

We have been grappling with the idea of enforcement and I, therefore, think that we should support it and I want to congratulate the Committee for coming up with such a brilliant proposal.

Secondly, Mr Chairman, Sir the issue of having an appellate process is a right; it is a cardinal right under natural justice principles and, therefore, it is very important that we provide for it.

Thirdly, there is the issue of timeframe. It is very important that we put a timeframe. We usually have open ended mechanisms. And Hon. Patricia yesterday was very clear, the Council of Ministers is scheduled only to meet twice a year. They are now making proposals to meet on a quarterly basis. Can they and do they have the time to handle this? Because at the end of the day, if we have created an institution under the East African Community Laws, then we should empower and utilise these institutions such as this one which is charged with handling of remedies to do its work effectively.

So, on this basis and based on the fact that this will help us operationalise this law and considering that the business community cannot wait forever, 90 days is a very important time frame, I would like to propose that we support this and that the Chair, Council of Ministers supports the Committee on this very brilliant proposal. I thank you.

**The Chairperson:** Before Hon. Mumbi takes the floor, key to be understood by us is whether the Committee named in the law has the powers to undertake this activity. That is very important. But Hon. Mumbi and then I come to Hon. Patricia.



**Ms Mumbi:** Thank you so much, Mr Chairman. You have actually brought out my point of confusion because, though I support the timeframe, the 90 days, I really don't understand where the Committee is coming in. I, therefore, want to understand why we are bringing in the Committee? For me it is the Council of Ministers who would take this on board.

I want to be educated on that bit of the Committee so that I can either support the amendment wholly or in part. But about the timeframe, I am comfortable. Thank you.

**The Chairperson:** Information from Hon. Mwinyi. I think it is very important.

**Mr Mwinyi:** Thank you, Hon. Chair. I just wanted to give information to my honourable friend. If you refer to page 4 of this document, on the definition page, there is The East African Community Committee on Trade Remedies - this is paragraph 4 – established by Article 24 of the Protocol for the Establishment of the East African Community Customs Union. So, the Protocol of Customs Union establishes this Committee for the very purpose of which this Bill is put in place, amongst others. And this Committee reports to the Council of Ministers. That is the information, which I wanted to give.

**The Chairperson:** That information is important to give clarity to members that this Committee is established under the Protocol and it is referred to in the Bill as one with the capacity to handle this particular task.

**Dr Saadalla:** Thank you, Mr Chairman. I agree with the recommendations amending this part but again I only disagree with the issue of including the Committee on Trade of EALA to take part in handling these issues. (Interjections) I am sorry. Maybe I misheard.

**The Chairperson:** Let me help the Chair, Council of Ministers. It is not the Committee on Communication, Trade and Investments of EALA. It is the Committee on Trade Remedies within the Protocol, which is defined in the Bill.

**Dr Saadalla:** Okay, it is true, Mr Chairman. The Committee of Remedies under the Protocol of East African Community Customs Union. If you go to Article 24 (f) says that: “...*can handle any other pertaining to any other matters referring to the Committee by the Council.*” This is No.1.

But also when you go to sub-section 4 (e), it says, “The functions of the Committee shall be to *Report to the Council on the determinations in relation to matters that are submitted to it and decisions made by it.*” So, whichever way, Council is there.

I really appreciate that there will be no much time to deal with issues of individuals or companies or person to person disputes. They have to go to the Trade Remedies Committee, which then in turn will come to the Council for a decision.

But still, there is another option due to the extended jurisdiction that any person may not even come here and go to the EACJ. So, I agree with you, Sir.

**Mr Kimbisa:** Thank you, Mr Chairman. The concept of timeframe is what I support strongly because we do have the problem of time in this part of the world. Some quartets say time in this part of the world is in a circle. Anything which falls within the circle is okay.

Even if you planned something to be done at 8 O'clock in the morning so long as you are in the circle, you can do it even in the evening.

So, to avoid that umbilical code of having issues just running within the circle, irrespective of time, it is better to set a timeframe. So, to me three months is very okay.

Two, punishment is also in order because if you accept rewards, you have to also accept punishments. This is very basic and it will create fear and make people responsible for their actions. Because if people just do what they want and they can run away from it without anything being done to them, then I think it is not in favour of what we want.

In order for goods and services of this region to run smoothly, we need people to be responsible.

My only small hiccup is about – I think the responsibility of the Council of Ministers should be paramount. No matter what, no matter which Committee, no matter who, but at the end of the day, it is the Council because they are entrusted by the Partner States to ensure that everything goes on smoothly.

Therefore, unless you want to keep the Court of Justice busy- maybe they are not bust enough- and push everything there. If we start with this, then we shall not end up there. Everything on which we have a question mark, we put it there. So, I still think the Council of Ministers have a big responsibility. The only thing we have to insist is that they must put in more time so that our activities move faster. Thank you.

**The Chairperson:** Honourable Members, let me make this clarification. The Protocol gives the Trade Remedies Committee power to receive this kind of complaints and consider them. After they have considered them, they report to the Council of Ministers. Therefore, legally, it is in order.

Secondly, the Chair, Council of Ministers has conceded to this provision. So, I now put the question. [*HON. MEMBER: "The time, Mr Chairman?"*] The time is 90 days.

**Mr Ogle:** I understand but Mr Chairman, what I wanted to suggest is that there is no doubt that this amendment is so brilliant.

**The Chairperson:** Honourable Members, our rules are such that you have to catch the eye of the Chair or the Speaker and then after being named, you speak. Okay, Hon. Chair, CTI and then Hon. Ogle.

**Mr Mbidde:** Thank you, Mr Chairman. I am raising on – we have agreed tentatively with Hon. Mwinyi that the time limitation provided for that local remedy exhaustion, must be that time that allows a disgruntled party to either approach court for purposes that the decision is wrongly administered or not administered at all by inaction.

The Treaty, particularly Article 30 (2) – the time limitation for any matter that should arise before the East African Court of Justice is 60 days. And that must be within the period of the occurrence of the act complained of. So, meaning we reduce the timeframe to 30 days.

It is not 60 because you will have exhausted and ousted the capacity of the person to approach court. So, we give them 30 days.

**Mr Ogle:** Thank you so much, Mr Chairman. Hon. Chair of the Committee, I was just going to suggest that thing that the entire amendment being sought here is very good; it is very necessary, but the timeframe of 90, days is just too long. We are dealing with business matters; we are talking about facilitating and fast tracking business in the Community. So, I think the maximum we can go on this matter is 30 days. I think that will be fair.

**The Chairperson:** The issue at hand are the days only because the Chair, Council has conceded. Unless Hon. Patricia has something to say we can go ahead.

**Ms Hajabakiga:** Thank you, Mr Chairman because the Article I raised yesterday was the core of the whole Bill, if you looked at it properly. That was my concern yesterday and I am glad that the amendment is addressing that issue.

Mr Chairman, if the Treaty talks about 60 days, we can't go below- remain within 60 days. We have to take what is in the Treaty. I think that is the only contribution I have.

**The Chairperson:** Hon. Mwinyi, could you please help us in the interest of time, really?

**Mr Ngoga:** Thank you, Mr Chairman. The point raised by the Chair is very interesting because if we are providing for the possibility of the aggrieved party going to court, and when there is a specific timeframe within which the court retains jurisdiction, then we have to make sure that the administrative process that needs to be exhausted as a condition before one goes to court is taken into account the timeframe provided by the court to entertain the matter.

Otherwise, you will end up with an aggrieved party exhausting the administrative process when it is no longer possible to opt for the court.

**Mr Mwinyi:** Thank you, Mr Chairman. The Protocol doesn't stipulate any timeframe. It is up to the Members to decide an appropriate time.

**The Chairperson:** Hon. Mwinyi has the floor and please, address your point and any Member with any contrary view will rise later.

**Mr Mwinyi:** Thank you. I concede 30 days. *(Applause)*

**The Chairperson:** The mover has conceded to 30 days. In the interest of time and business urgency, Hon. Members, I now put the question to the amendment as moved by Hon. Mwinyi and amended thereafter the debate.

*(Question put and agreed to.)*

*(Clause 6, as amended, agreed to.)*

Clause 7

**The Chairperson:** The proposal is that Clause 7 be part of the Bill. Hon. Members, I have so many amendments here. I will not be able to remind a Member that please, stand up. I will just proceed if you don't stand. I put a question that Clause 7 be part of the Bill.

*(Question put and agreed to.)*

Clause 8

**The Chairperson:** Hon. Members, the proposal is that Clause 8 be part of the Bill. Okay, Hon. Members, I would like to make this abundantly clear. I have about seven pieces of amendments proposed by Members. And I cannot have my eyes on all the papers at the same time. So, if I read a clause and you have an amendment, do this House a favour by rising and moving the amendment. If you don't do so, I will proceed and put the question.

**Ms Byamukama:** Mr Chairman, I don't know but I really have a problem on how we proceeding because are we handling the whole clause? My challenge is this, yesterday I humbly

submitted my proposals but unfortunately they may not have been written properly in their chronological order.

So, in view of the fact that we have gone past Clause 7 and I had given this to the Committee, I humbly request that when it comes to, maybe that stage, you will have to do some re-committal. But I thought the process of submitting this would have helped me ease it and the Clerk would help you raise that there is an amendment on this issue.

**The Chairperson:** Thank you so much, Hon. Dora. Definitely you have a right to raise a re-committal to this. And Hon. Members, when we are proceeding I will say, Clause 7 or whichever clause but not going sub-clause by sub-clause. If you have an amendment to any of the sub-provisions of that particular clause, you have to move. I am not going to move sub-clause by sub-clause. So, we shall re-commit that but as of now, we are on Clause 8.

I now put the question that Clause 8 be part of the Bill.

**Ms Byamukama:** Thank you, Mr Chairman. I propose that under Clause 8 (2) (a) it reads as follows: - and this flows from an earlier proposal where there would be – let just read it as it is: - let me let it be because I think there is some confusion.

**The Chairperson:** But in case the Committee has conceded on their amendments – Chair, Committee, I can help you. You submitted to amend Clause 8 (1) to be replaced with the following clause; and it is at this point that I request that you move this amendment as per the Committee report on Clause 8 (1).

**Mr Mbidde:** Yes, Rt Hon. Chair, I am looking for the submission we made.

**The Chairperson:** If you have your report on page 3, proposed amendments of the Committee report; your own report. Clause 8 (1) is proposed to be amended by the Committee.

**Mr Mbidde:** Much obliged, Rt Hon. Chair. For that reason to be replaced with the following new clause that: “The ministry responsible for East African Community Affairs in every Partner State shall be the national focal point for matters relating to Non-Tariff Barriers in the Partner state.”

**The Chairperson:** Seconded by Hon. Mwinyi, Hon. Straton and Hon. Kiangoi. Chair, can you justify?

**Mr Mbidde:** The justification is that ministries responsible for EAC Affairs were established primarily for coordination of all matters related to the implementation of the Treaty, which extends to all protocols annexed to the Treaty and Laws of the Community enacted to implement the programmes of the Community.

This is in line, Mr Chairman with the memorandum which actually gives credence that this Bill seeks to give effect to Article 13 of the Protocol for the East African Community Customs Union. I beg to move.

**The Chairperson:** Thank you. Debate is open on the proposal.

**Mr Mathuki:** Thank you, Rt Hon. Chair. I appreciate the justification given by the Chair of the Committee but we would want to appreciate that it is not in all the cases that matters of trade or Non-Tariff Barriers are handled by the Ministry responsible for EAC Affairs.

In a very specific case, for example, when we talk of East African Affairs in the Partner State of Kenya, you find that the matters of trade are handled by - particularly issues of international trade – the Ministry of Foreign Affairs and another ministry but not necessarily Ministry of East African Affairs. So, we have to be careful so that we don't commit this to a particular ministry, which we call East African Affairs and then it becomes a problem.

You see, we are sorting out the issues of NTBs. So, we want to avoid a situation where there are delays. We have already given time of 30 days in this particular Bill and then if we commit this to a ministry that is not necessarily responsible for matters of trade or NTBs, then of course it becomes a problem. So, as it is in the Bill, the ministry that a Partner State may designate to handle matters of NTBs is open and easier and clearer than committing to a ministry that may not be necessarily dealing with affairs of NTBs.

Therefore, Mr Chair, I only appeal to the Hon. Chair of the Committee to be careful so that we don't then refer these matters to a ministry that may not necessarily be dealing with this and yet there is a timeframe that has been put. So, we continue creating barriers after barriers in a Non-Tariff Barrier Bill. Thank you.

**Mr Ngoga:** Thank you, Chair. I think NTBs would involve so many things that you find in the attributions of many ministries. But what is being spoken about here is the focal point. The EAC Ministry have overlapping functions to coordinate everything that has to do with the Community.

The other day, when H.E. the Chair of the Summit was addressing us, he spoke about security needs that may arise. So that will fall into a relevant ministry responsible for Security. But you would find another situation as well. So, we are talking about the focal point. Otherwise you would never have a situation where one ministry has everything under its docket that has to do with NTBs. So, I think having the EAC ministries as focal points is something that I would support.

**Mr Mbidde:** Further clarification, Mr Chairman.

**The Chairperson:** Just wait, you will respond as Chair later. Hon. Dora and then Hon. Kiangoi.

**Ms Byamukama:** Mr Chairman, Sir, I would like to agree with what my colleague, Hon. Martin has said. Apart from the fact that we need to be specific on the issue of where the focal point will reside because if it is everybody's business, it becomes nobody's business.

When you look at the functions for these focal points, you will find that they are to initiate policy, coordinate activities, facilitate implementation and it goes on and on. Finally, this national focal point shall be the Secretariat of the National Monitoring Committee. I think it is very important that we don't only look at the entity but go further and look at the functions and we also see where this particular National Monitoring Committee will be housed.

Right now, I would like to support the Committee for this specificity because it will help us operationalise this law better. I thank you.

**Mr Kiangoi:** Thank you very much, Hon. Chair. If you are looking for efficiency, then we should be focusing on the Ministry responsible for East African Affairs because it will be more efficient to deal with the Ministry that deals with coordination of East African Affairs rather than various other ministries which may need to be coordinated by the Ministry of East African

Affairs so that now the Ministry can be brought to the Community. So, it is efficient to deal with the Ministry responsible for East African Affairs. I support the amendment.

**Mr Sebalu:** Thank you, Mr Chairman. I think there are two things we need to appreciate here; one, you can have a lead sector but you can also have an implementing sector. All we need here is to have a lead sector. And in this case, Ministry of EAC Affairs is a lead sector on matters to do with issues of the EAC. It coordinates the various ministries.

Like the issues of NTB, is a crosscutting issue. It can come up in any other sectors but there is need for a lead ministry to take political responsibility on those issues.

The way the East African ministries are functioning now, is basically doing that. They get the laws that we pass, coordinate them at national level to get Government ministries, departments and agencies that are supposed to implement.

Take, for instance, the issue of immigration, it is still coordinated within the Common Market Protocol where the Ministry of EAC Affairs takes the lead in coordinating these ministries. So, I believe we need a ministry to take political responsibility. Actually, it is better to have a ministry that is not implementing so that it coordinates and takes responsibility; it can give stock in terms of progress to be able to appreciate what is happening. So, I believe we are spot on and that is the best way to go.

**The Chairperson:** Chairman, Council- maybe the Chair of the Committee can first clarify a few things and then I see whether the Chair, Council concedes on the matter.

**Mr Mbidde:** Thank you, Mr Chairman. This is of course to particularly ally the fear of Hon. Mathuki, you know, when you are confronted with such a matter, Rt Hon. Chair, you should quickly – because this is a matter to do with cooperation in trade liberalisation and development. It is a matter under Chapter 11 and under which under Article 75, the Customs Union Protocol is established, which is the very protocol that lays the bedrock of this law.

Now, when you are confronted, you go particularly to Article 8 of the Treaty. And I have been reminded very seriously by the Hon. Minister under Article 8; where is the designated ministry that was actually sent for purposes of handling East Africans on cooperation matters? So, when you reach this kind of a Bill, this ceases to be the trade within the meaning of Partner States. This is a trade within the meaning of cooperation, that is, East Africa. So, this is the substantive ministry for that purpose.

**Dr Saadalla:** I accept the amendment, Sir.

**The Chairperson:** Honourable Members, I now put the question on the amendment as moved by the Chair of the Committee.

*(Question put and agreed to.)*

**Ms Byamukama:** I have a minor amendment on Clause 8 though I feel that it is very important. This is in respect to Clause 8 (2). I would like to propose that we should add 2(a) which says, “The functions of the national focal point shall be to initiate policies and strategies on the elimination of Non-Tariff Barriers in the Partner State for the approval of the National Monitoring Committee in accordance with the laws of the Partner State.” I would like to propose that we instead say, “...in accordance with Community Laws and laws of the Partner State.”

**The Chairperson:** Seconded by Hon. Sebalu and all the other Members standing. Hon. Dora, proceed.

**Ms Byamukama:** Thank you very much. Mr Chairman, Sir, we have already passed a clause and this is Clause 6, which talks about a public officer or institution not engaging in nay activity which is not authorised by the Laws of the Community or of the Partner State.

Therefore, even in the operationalisation, we should be able to succinctly capture Community Laws. If we do not, even the law we are trying to enact today, will, actually, not be operationalised to the extent that we would like it to be operationalised.

So, wherever we mention laws, I would like us to also mention the fact that we have to take into account Community Laws and Partner States Laws. This is the justification I would like to move. Thank you.

**Dr Saadalla:** I concede, Sir.

**The Chairperson:** I put the question on the amendment as moved by Hon. Dora.

*(Question put and agreed to.)*

*(Clause 8, as amended, agreed to.)*

Clause 9

**The Chairperson:** Honourable Members, the proposal is that Clause 9 be part of the Bill.

**Ms Byamukama:** Mr Chairman, I have an amendment on Clause 9 and it reads as follows: “The Non-Tariff Barriers within the Partner States shall be eliminated using the following mechanisms:

... (c) Insert “laws, regulations”

**The Chairperson:** Seconded by Hon. Buchumi and Hon. Valerie.

**Ms Byamukama:** I would like to capture the word “laws” because I humbly believe that a law is a very vital mechanism, which will enable us to eliminate NTBs and that is why we are actually enacting this law.

**The Chairperson:** This is a very small amendment.

**Dr Sadalla:** I concede, Sir.

**The Chairperson:** I put the question on the amendment as moved by Hon. Dora.

*(Question put and agreed to.)*

*(Clause 9, as amended, agreed to.)*

Clause 10

**The Chairperson:** Honourable Members, the proposal is that Clause 10 be part of the Bill.

**Mr Zein:** Thank you, Mr Chairman. I have proposed amendments on 10 (1) and 10 (2) and a proposition to include a new 10 (3) and a new 10 (4).

If you allow me, Mr Chairman, I would like to propose that on 10 (1), I propose to delete the words “of another Partner State” and insert new words “Partner State or” and then also delete the words “mutual agreement” so as to read: “When a Non-Tariff Barrier is reported to a National Monitoring Committee or to a national monitoring focal point by an affected party, the concerned Partner state or States shall as a first priority hold discussions for the elimination of the Non-Tariff Barrier.

**The Chairperson:** Seconded by Hon. Kiangoi. Hon. Zein, proceed.

**Mr Zein:** Thank you, Mr Chairman. Section 10 is designed to give relief to an affected party who has been or maybe affected negatively by the existence or even by a threat to establish a Non-Tariff Barrier.

As currently constructed, I believe the provision has lacunas that under certain conditions might limit or even deny an affected person an opportunity to seek relief envisaged by this section.

It provides that when a Non-Tariff Barrier is reported and you read up to “... of another Partner State,” my issue is this, what if the person who is affected is not of another Partner State? What if that person is from within that State? Does it mean that we preclude the opportunity of relief simply because that person is not from another Partner State but from the Partner State where the Non-Tariff Barrier is created?

This kind of discrimination is not allowed by Article 6 of the Treaty and if we are providing relief, it should be relief to everyone. And I see a situation where I as a Kenyan, have an issue and I am an affected party in Kenya but because I am not a member of another Partner State, I cannot raise any concern and I cannot get any relief.

Therefore, Sir, I would like to submit that for me, it is critical for is to do it that way. And I am seeking to delete the other words because they are already contained in Section 9 and it is just repetitive. When you add the word “state” or “states,” it cures the problem of somebody being discriminated against in their own State. I beg to submit.

**The Chairperson:** Thank you so much, Hon. Zein. The Hon. Member is moving that a national who is suffering from an NTB which is in that very particular country must have a point of redress. They must not be segregated against, which I think is very clear. Chair, Council of Ministers.

**Dr Sadalla:** I understood the concept and I agree with them; I concede with the amendment sent by Hon. Zein.

**The Chairperson:** I now put the question on the amendment moved by Hon. Zein.

*(Question put and agreed to.)*

**Mr Zein:** Mr Chairman, as a consequence of that amendment, there are consequential amendments that are necessary to do in 10 (2) and I am proposing to insert the words “State or” between the words “the” and “Partner” further we should consider replacing the words “whose affected parties aggrieved” with the words, “from which the affected party is from.” These replacements propose for clarity and so as to increase elegance and being in conformity with 10 (1).



Therefore, if you admit these words, 10 (2) will read as follows: “Where the Partner State or States do not agree on the elimination of a Non-Tariff Barrier, the Partner State from which the affected party is from shall notify the Secretary General and request the matter to be referred to the Council.

**The Chairperson:** Seconded by Hon. Martin. I think you have more or less done it; it is consequential.

**Dr Saadalla:** Yeah, it is consequential and I concede to it.

**The Chairperson:** I now put the question on the amendment moved by Hon. Zein.

*(Question put and agreed to.)*

**Mr Zein:** Thank you, Chair. Now, I am proposing to create a new 10 (3) and 4; I propose to introduce two new sub-sections 3 and 4 to Section 10. The two sub-sections will provide for the situation where the concerned party doesn't act or takes longer than stipulated in the timeframe.

I am saying this, also in relation to what Hon. Mwinyi has already said to this House. We need to establish a timeframe under which a person is given relief but also a person having the right to directly access the relief.

So, the new 10 (3) will read as follows: “If the Partner State from which the affected party comes from doesn't notify the Secretary General in accordance with 10 (2) within 60 days, the affected party shall have the right to notify the Secretary General directly.”

**The Chairperson:** Seconded by Hon. Ogle and Hon. Mwinyi. Hon. Zein, proceed.

**Mr Zein:** Thank you Chair. As I was explaining, if you leave 10 (2) only and there is no relief, what happens to this affected party? What if the Partner State doesn't report to the Council? So, the relief I am seeking is of inaction so that the affected party will give an opportunity to the State to act but if the State doesn't act within 60 days, then they would have the right of recourse to go directly and report to the Secretary General.

**The Chairperson:** I think the Hon. Member is very clear.

**Dr Saadalla:** Sir, I am sorry, I have to consult with my legal officers because I am worried that a third party can directly contact the Secretary General without at least contacting the Ministry in charge of East African Community Affairs.

**The Chairperson:** Chair, Council, the Member is moving to cure the interest of the affected person whose suffering has not been reported by the Partner State within the given timeframe. And now he should have his right to petition directly. That is the essence of his amendment.

I am just waiting for the Chair, Council of Ministers to concede or I put the question.

**Mr Mbidde:** Thank you, Mr Chairman. I am supporting the amendment but reducing the number of days bearing in mind the required number of days within which a person is capable of accessing court within the meaning of the provisions we have already passed. We agreed on one month; 30 days, Mr Chairman.

I also did not know that it had to be a provision for an individual to access the Secretary General. I thought this was: one, within the terms of reference of the Secretary General to

supervise the Community. So, I do not know how it becomes a provision within the law allowing a person to access him after a specific activity is either done or not. We need advice on that.

**The Chairperson:** There are two issues that the Hon. Chair, CTI is raising here; one, on the issue of the number of days in relation to a provision of the Treaty and also the amendment we adopted in 6(2) moved by Hon. Mwinyi. That is one.

Two, the right of a citizen to access the Secretary General directly. Those are the issues raised by the Chair of the Committee. Let me first have Hon. Martin and then I come back to you.

**Mr Ngoga:** Thank you, Chair. I agree with what the Chair, CTI has proposed regarding the number of days.

But whereas it could be deemed outright correct to contact the Secretary General, when there is a domestic remedy to be exhausted, it doesn't become that automatic. So, it is very important that the domestic remedy is exhausted before an individual contacts the Secretary General. This should be explained with clarity as it has been proposed.

**The Chairperson:** Hon. Zein, clarify.

**Mr Zein:** First thing, let me concede. I accept 30 days and it makes sense.

But let me go back to the fundamentals. Why are you accessing the Secretary General in this case? You need to go back to 10 (2). The only purpose for which you are accessing the Secretary General is to give notification. It is only that. It is only to give notification and in this case, the Secretary General is acting as the secretary of the Council.

So, once the State party has then given notification to the Secretary General, it is up to the Secretary General to bring this matter to the Council for consideration. So, all I am asking for is this, in the absence of remedy, we are only seeking to say the affected party should be able to go and give the notification. It is only that. We are not adding or taking away any of the fundamentals of the Secretary General.

Lastly, for me, in the absence, let us say, for instance, the State party refuses to act, what would happen? There are only two situations; the affected party will then accept the unbearable condition and be an aggrieved party and be silent or go to court.

So, you are going to do exactly what Hon. Kimbisa had warned us against. Don't make people run to court while you can resolve these issues within the framework. And all I am seeking to say, is an affected party should have recourse if those who are responsible do not act.

**The Chairperson:** Thank you so much, Hon. Zein. The Hon. Member has put his case very clearly and he has conceded to the number of days.

**Dr Saadalla:** Yes, I understood the concept, Mr Chairman and I concede to the number of days but the word "notification" must be clearly stipulated by the drafters. Thank you.

**Mr Mbidde:** Yes, that goes with the requirement for gazette of a notification. Otherwise one will not know within the 30 days whether a notification has been issued. That is what I would like the Chair, Council to agree with the draftsman for the requirement to gazette the same.

**The Chairperson:** The Chair, Council is in agreement with the principle and the mover has also reduced on the number of days. I now put the question to the amendment moved by Hon. Zein.

*(Question put and agreed to.)*

**Mr Zein:** This one is much simpler after going through 10 (3). 10 (4) simply says, “The notification to the Secretary General made under 10 (3) shall have the same effect as the notification given under 10 (2). Basically for avoidance of doubt. That is all. So, it is consequential.

I am saying, once we have agreed on the notification of the aggrieved party or affected party - I am just putting it there that the notification given under that channel has the same effect as the notification given by the other one. So, it is a consequential amendment.

**The Chairperson:** It is just seeking equal strength of a petitioner, which I think is okay.

**Dr Saadalla:** I didn’t understand who the other is. I am sorry, it is not flowing. Let the mover explain because I don’t have the amendment with me in my hands. That is the main problem.

**Mr Zein:** Thank you very much. Please, give this copy to the Chair, Council. But Chair, for the record, I submitted these proposed amendments to the Committee before their meeting at 10.00a.m.

**The Chairperson:** Just for clarification, Hon. Zein.

**Mr Zein:** I am just saying.... - *(inaudible)*-

**Mr Zein:** ...*(inaudible)*... under 10(3) shall have the same effect as the notification given under 10(2) and 10(2) is the one, which was a notification given as a State Partner seeking notification. 10(3) is one by the affected party so I am saying in law this should have the same weight and the same effect. That is all I am saying and I am saying it is a consequential amendment to 10(3).

**The Chairperson:** Chair, Council of Ministers, since you conceded, this one is consequential and it does not have major effect.

**Dr Sadalla:** I get the point and I concede to that.

**The Chairperson:** Thank you so much. I now put the question to the amendment as moved by hon. Zein.

*(Question put and agreed to.)*

*Clause 10, as amended, agreed to.*

Clause 11

**The Chairperson:** Honourable members, the proposal is that clause 11 be part of the Bill. I now put the question.

*(Question put and agreed to.)*

Clause 12

**The Chairperson:** Honourable members, the proposal is that clause 12 be part of the Bill. Chair of the committee, I think your report indicates something.

**Mr Mukasa Mbidde:** Mr Chairperson, the committee was of the opinion that clause 12 is amended by inserting the following sub clause immediately after sub clause 3: ‘Any person aggrieved by a directive, decision or recommendation of the Council under sub section 2 or a decision of the East African Community Committee on Trade Remedies under sub section 3 may refer such a matter to Court.’

Mr Chairperson, we stated the East African Court of Justice but this is for purposes that we shall revisit. We shall just call it a Court because it is the Court within the meaning of the protocol and also, we can redefine it under the Interpretation Section but in case we cannot go back then we shall name it but it is the East African Court of Justice.

**The Chairperson:** Chair, you have moved and I am seeking for secondment to your amendment. Hon. Dr Ndahiro, hon. Straton, hon. Kiangoi. You can give clear justification.

**Mr Mukasa Mbidde:** Mr Chairperson, it was the intention of the committee with certainty to determine that such a law should provide a substantive mechanism for dispute resolution. That is as short as it is.

**The Chairperson:** The Chairperson, CTI is moving that after all that has been done, the offended person has leeway to go EACJ Chair, Council of Ministers.

**Dr. Sadalla:** I agree with that, sir.

**The Chairperson:** Thank you. I now put the question to the amendment as moved by the Chair, CTI.

*(Question put and agreed to.)*

*Clause 12, as amended, agreed to.*

Clause 13

**The Chairperson:** Honourable members, the proposal is that clause 13 be part of the Bill.

**Mr Zein:** Thank you, Mr Chairman. Clause 13 gives exceptions where countries where countries can establish temporary measures and policy that might be construed or mean non-tariff barriers but because of the circumstances, the country should be allowed to have it. I have no problem with that provision except that I want to introduce 13(4) which will then put limitations as to how many months this temporary measure can take without recourse for review.

**The Chairperson:** Seconder? Hon. Sebalu. Hon. Zein, before you justify, for the benefit of hon. Dr Ndahiro to know that we are now on Part 5 of the Bill, which is general provisions, and we stood over Clause 5 for him to think of reintroducing his amendment under general provisions. This was just a reminder. Hon. Zein.

**Mr Zein:** Mr Chairperson, I propose the establishment of 13(4) which reads, “The timeframe contemplated under 13(3) shall not exceed 12 months without the approval of the East African Legislative Assembly.”

Basically I am saying a country will be free to introduce these temporary measures and the word being used here is ‘temporary’ but if that time is extended up to 12 months meaning a whole year, I do not think it is right to continue to the second, third and fourth year in perpetuity. I am suggesting that there be a mechanism for review and approval for anything more than 12 months and that arena is the right arena which is the East African Legislative Assembly, which is the representative of the people and which also has the oversight function and the law making function.

A country is then free to work with the other Partner States and introduce these measures for security reasons, for other circumstances that emergency might require but it cannot exceed 12 months. If that country seeks to get more than 21 months then it will have to come to this august House and seek consent. I submit.

**The Chairperson:** Hon. Dora is seeking clarification.

**Ms Byamukama:** Mr Chairperson, I am a little bit confused. I had submitted a written amendment on clause 13 and I am now hearing another amendment. I do not know whether these should be considered together. Maybe they should otherwise we shall be repeating each other.

**The Chairperson:** Hon. Dora, I think your amendment may not be the same like that of hon. Zein. We will dispose of hon. Zein’s amendment and then before we go to adopt the clause 13 as part of the Bill, you will also move your amendment unless you are on the same matter.

**Ms Byamukama:** Mr Chairperson, permit me to say that I am not opposed to what hon. Zein is proposing. My amendment is talking about two things. One, the need to define temporary measures at some point and number two, the need to make reference to regulations, which regulations will provide for a periodic review on the existence of such measures so that these temporary measures do not eventually become permanent measures. This is written and was submitted to the Clerk’s office and your office and to the committee. So I am wondering whether we should- I think it would be easier if we handled together. One, what are they and then two, can we make specific reference so that the regulations are obliged to provide extensively for a review mechanism, time frame and how this will be better operationalised. This is my concern.

**The Chairperson:** Thank you so much. Hon. Dora. For the sake of clarity, hon. Zein moved an amendment which was seconded and we are debating it on clause 13. We also have a notification of an amendment to be moved by hon. Dora which has some aspects of the amendments of hon. Zein. Now how do we move from here?

My suggestion is we handle hon. Zein’s amendment and if it has tackled those aspects which you had also moved then you will now move on only the aspects which have not been tackled by what hon. Zein’s amendment has addressed.

**Dr. Ndahiro:** Mr Chairperson, can’t we listen to both before we consider one?

**The Chairperson:** Honourable members, I am constrained by the Rules of Procedure that this is an amendment moved as per our Rules of Procedure unless the member is moving to amend the amendment as moved then we can handle it jointly. But if not then we dispose of that one and then the second member will also proceed to move, either in totality or the aspects which have not been addressed by the amendment which we would have adopted.

**Mr Sebalu:** Thank you very much, Mr Chairperson. I think your guidance gives us a good way of proceeding. In the interest of time, hon. Zein has made amendments and the amendments proposed by hon. Dora have a lot in common with what has been amended. I would appreciate that amendments be made to hon. Zein's amendment to accommodate that aspect so that we dispose of it at the same time and then we are able to proceed because the intent and the principle are the same.

**The Chairperson:** The Chair is constrained to invite amendments. He is just waiting but otherwise –

**Mr Zein:** Mr Chairperson, the only reason I stood up when you said 13 is that I was scared that you would go on and we would pass it. The guidance from you was when it is mentioned, stand up if you have an amendment. I am saying two things. In my opinion, hon. Dora's amendment is a good one but it does not touch what I am taking about. The one which hon. Dora is moving has to do with an internal –

**Ms Byamukama:** Mr Chairperson, I have really constrained myself but let me just refer to these very newly made rules. Rule 31(5) proposes, "Any amendment, manner of debating motions and amendments therefore – We have a motion before us. *“Any amendment to be moved and seconded in the House shall be required by the Speaker to be put in writing by the mover and delivered to the Clerk.”*

Our biggest challenge right now, and I am not opposed to the amendment, is that we need to listen very carefully, we need to understand, we need to get justification but as you have guided, I will listen to the proposed amendment but it might be better next time if this could be written for ease of work. It helps us.

**The Chairperson:** Thank you so much. Honourable members, I want to make this clarification. The rules require that the mover puts in writing to the Chairperson and this has been done as per the requirement of the rules and we have it. Therefore the member is moving and I guide that the member proceeds.

**Mr Zein:** Thank you for the guidance. That is the reason, Mr Chairperson that I had indicated that I had submitted this to the committee in writing and it was circulated.

The point I was making is this. I would prefer for both amendments to stay because they cure two different issues. The one of hon. Dora cures the one of within the administrative measures and mine deals with the question of the role of Parliament –

**The Chairperson:** Honourable member, can you move? Hon. Dora will move her amendment later.

**Mr Zein:** Mine was moved and circulated. All I am saying is whatever happens administratively, you have 12 months to have this non-tariff barrier exist. If you want to extend

it above 12 months then the role of Parliament comes in. you come back to the East African Legislative Assembly and give your justification as to why you need more time. The Parliament then can decide. Twelve months, that is a year is enough for me in terms of the Executive being able to do their own things.

If we do not do that, the Executive will have a field day and we can have a non-tariff barrier exist in perpetuity. I submit.

**The Chairperson:** Clarification from the Chair, Council of Ministers.

**Mr Mwakyembe:** Mr Chairperson, I would like to be clarified by possibly members or hon. Zein. At which forum of EALA this claim can be forwarded to. Doesn't it mean that EALA is now becoming an administrative Organ rather than over sighting in other duties given to it? I stand to be clarified so that I can make a decision on this amendment.

**The Chairperson:** Hon. Zein, I think you get the concern that to the EALA by who? To what effect? As a motion or a Bill? That is the point of contention now. Maybe you could wait to hear from the honourable Chair, CTI Committee first.

**Mr Mukasa Mbidde:** Mr Chairperson, clause 13 is to do with temporary measures by Partner States. When you look at the functions of the Assembly, there is no administrative function with regard to measures taken by Partner States on any activity.

I think we can take care of hon. Zein's concerns for extensions of time and all that under clause 17 where Council establishes by statutory instrument under this Act to give details on manners of implementation of this Act by way of a statutory instrument.

Honourable members, a substantive law cannot be as elaborate as required but there are powers that are residual that are usually granted to an entity like it has under clause 17 except if it is amended for purposes that by statutory instrument which is even any instrument that can be amended from time to time, create avenues for extensions of time.

**Ms Byamukama:** I support hon. Zein's proposal in principle but I also want to quickly add that what the Chair of the committee has said I think would solve the problem because if, and as I agree with hon. Zein - If hon. Zein wants to loop in the Assembly, I think the best mechanism would be under clause 15 whereby the assembly can also have these reports tabled for consideration. That would cure some part of it because when they are tabled for consideration then the Assembly will take off time to debate these reports authoritatively and also make recommendations, which would give guidance on what action should be taken.

Also like the chair of the committee has said, we could make reference at some point on the issue of the 12 months that he is also talking about and this could also be handled under regulations. If maybe this could be crafted in such a way that when we look at the regulations for generally giving effect to the provisions of this Act, maybe we could also put in the fact that this should take into account time frames as well as persons responsible to take action. I do not know whether this will cure what is being proposed.

**The Chairperson:** I hope hon. Zein has listened to the argument. Let us hear from hon. Martin.

**Mr Ngoga:** Thank you, Mr Chairperson. I think the idea of putting a limit to the period the temporary measures can take is so fundamental and it cannot be delegated to the regulations. I would suggest that to marry the two proposals because hon. Dora's amendment requires the specification of when the temporary measures would end so we can add a proviso that states, 'provided this does not exceed 12 months and if it has to exceed 12 months then we refer to these organs that have to receive the reports.' So we can have both in just one provision instead of leaving an important issue like this for the regulations.

So we can take hon. Dora's proposal entirely and add a proviso that contains hon. Zein's proposed amendment.

**The Chairperson:** Hon. Martin has the benefit of having the circulated amendments by hon. Dora and he thinks that your amendments can be eventually accommodated when hon. Dora officially moves her amendment to accommodate your concerns.

The Chairperson, CTI says your amendment looks to be administrative in nature and could fit under the regulations supposed to be developed by the Council. Hon. Zein.

**Mr Zein:** Thank you, Mr Chairperson. From the onset let me say that I concede to what hon. Martin Ngoga has submitted and that was my position from the first. Having said that, let me say four things which are critical for the record of this Assembly.

Number one, to me regulation seeks to give detail, clarity and mechanisms. I agree with hon. Martin that you cannot take a matter of principle and put it in regulation. Principle needs to be in the main body of the law.

Secondly, this Assembly has the power to make this law. If it has the power to make this law, you are telling me it has no power to come back and find out how this law is being implemented. We have immense powers that we are scared about ourselves. I will suggest that what we are proposing is right in the hands of all the three classical functions of this Assembly.

Thirdly Mr Chairperson, it is useful to have this Assembly appraised on extra ordinary measures that have been taken because this provision deals with extra ordinary measures. It does not deal with the ordinary non-tariff barrier.

Lastly, if you ask me what the word approval by this Assembly means in ordinary circumstances, it means it is brought here, discussed and either you put the question people accept or reject. That is what approval means.

**The Chairperson:** Thank you, hon. Zein. I take it that you have conceded on your amendment to allow hon. Dora move and then you bring a rejoinder to her amendment to accommodate your concern. Thank you so much, hon. Zein.

We are still on clause 13. Hon. Dora, can you move your amendment?

**Ms Byamukama:** Mr Chairperson, I beg to move an amendment to clause 13 of the Bill which reads as follows: 'A Partner State shall inform other Partner States of temporary measures the date of imposition of the measure –



**The Chairperson:** Chair, Council of Ministers, I think it is important that you pay attention to the amendment being moved by hon. Dora.

**Ms Byamukama:** ‘A Partner State shall inform other Partner States of temporary measures, the date of imposition of the measures and the period of existence of the measures provided that this does not exceed 12 months.’

Let me just read it as it is. ‘A Partner State shall inform other Partner States of temporary measures, the date of imposition of the measure and the period of existence of the measure as provided for in the regulations to this Act.’ I beg to move.

**The Chairperson:** Secunder? Hon. Valerie, hon. Frederic, hon. Ndahiro. Hon. Dora, go ahead and justify.

**Ms Byamukama:** Thank you, Mr Chairperson. The justification for this is to ensure that we have a periodic review process and that temporary measures do not degenerate into permanent measures and thus turn into non-tariff barriers.

Further modalities for this review process should be included in the regulations. I have specifically made reference to the regulations because I believe that regulations are subsidiary legislation and that regulations provide flexibility to be able to enable Partner States to review and proactively address the issue of the period of existence of measures.

Mr Chairperson and honourable members, this is the justification I have to this amendment.

**Dr Ndahiro:** Thank you, Mr Chairperson. I support the amendment but I also wanted to amend the amendment simply because if I can remind the House, we had a petition from the traders in Mwanza who were involved in cross border trade and particularly dealing in chicken and eggs – *(Interruption)* -

**The Chairperson:** Hon. Dr Ndahiro, you are already justifying your amendment before moving it. What amendment are you moving to the amendment of hon. Dora?

**Dr Ndahiro:** Thank you, Mr Chairperson for your guidance. The amendment I wanted to move was to notify each other within 30 days as prescribed in this Act because other provisions in this Bill provide for a maximum time of 30 days. Even in these circumstances, when a Partner State has put in place what would qualify to be a non-tariff barrier, they should notify each other within 30 days. That is the amendment wanted to move, Mr Chairperson.

**The Chairperson:** We need to dispose of the amendment moved by hon. Dr Ndahiro first.

**Ms Hajabakiga:** Thank you, Mr Speaker. I support the amendment by hon. Ndahiro that it is critical that we specify the time so that each Partner State does not have their own time, let us have one uniform time for every Partner State. Thank you.

**Mr Ngoga:** Thank you, Mr Chairperson. I think Dr Ndahiro’s concerns are properly addressed in clause 13(2). Maybe we should first examine it and see if there is need for that amendment. My feeling is that all these concerns are addressed already. 13(2) – Maybe I should read it out. Prior to the introduction of a temporary measure, the Partner State shall inform the other Partner

State of the temporary measure and where notification is not possible prior to the measure being taken, the measure and the notification shall be taken and done simultaneously.

So the conditions are such that it is given prior or at the same time as when measures are being taken. So there is no possibility, in my view, that it can be delayed beyond the date of imposition of the measure, according to this provision.

**The Chairperson:** Hon. Dr Ndahiro, you will have the last chance because they are talking about your amendment. Hon. Dora, on hon. Ndahiro's amendment.

**Ms Byamukama:** Hon. Ndahiro's amendment adds value to what I am trying to propose. He has brought in a time frame for notification and therefore I think it would read as follows: 'A Partner State shall notify other Partner States of temporary measures, the date of imposition of the measure and the period of existence of the measure within 30 days' and I had wanted to say 'as provided for' but – Thank you.

**Mr Mulengani:** Thank you, Mr Chairperson. I would like to agree with hon. Martin that when you talk about 'prior to the introduction of a temporary measure...

... 30 more days, I think what hon. Martin is raising is very important because this is prior. We are now legislating to give 30 more days which is a challenge again.

**The Chairperson:** Thank you, hon. Bernard. If we are on the same page, hon. Ngoga's clarification actually makes the matter more stringent and the provision of 30 more days gives even more openness but hon. Martin, you can still clarify on your –

**Mr Ngoga:** Thank you very much. One comment I want to make is that some of these measures may be of very urgent nature that it may not be possible to give notice of that 30 days. 30 days from when and before you do what?

This sub clause (2) of 13 actually makes it mandatory to do it prior and that is for the party taking measures to decide. In the alternative, on the same day when the measures are being taken so the risk of delays of other parties being taken into an ambush does not exist.

**Mr Mwinyi:** I stand in support of hon. Martin as very ably explained. What you have is 'prior' and 'simultaneously' which is more than enough. I thank you.

**Ms Pareno:** Thank you, Mr Chairperson. I do not know whether I am lost. I stand to be guided. If you look at the provisions of 13 (2) and (3), they actually take care of what they are all talking about. Let me just conclude with (3) which says, 'The Partner State shall inform the other Partner State of the temporary measure' so the information is there and that is the notification. It goes ahead to say, 'the date of imposition' that is the date it starts 'of the measure and the period of existence of the measure'. The date it starts, notification and the length of that measure meaning it even gives the date when it is ending. Otherwise we have not been talking about period.

So it takes care of all those notifications. You have given notice, you have given the date it is starting, and you have even given the period meaning you have given the date it is ending. So it takes care of it.

**The Chairperson:** Thank you so much, hon. Pareno. Hon. Pareno is inviting us to re-read 13(2) and whether really the amendments being brought are not taken care of in 13(2) and (3).

**Mr Mulengani:** Thank you, Mr Chairperson. The only concern I would request the House to focus on is the one that they had moved for putting a proviso in terms of the temporary measure; the period it takes because we had proposed but it was lost on the way through this debate that in (3), we would have gone ahead to say, 'provided this measure does not exceed 12 months' and this was raised again by hon. Peter to put a proviso that for as long as the temporary measure does not exceed 12 months.

**Ms Byamukama:** Mr Chairperson, my whole aim of bringing up this amendment was to provide for a review process so that what is supposed to be temporary does not degenerate into a permanent measure. That is the whole essence. Therefore maybe a proviso that these measures do not exceed for example 12 months at least would help me.

This is because I am trying to loop in a review process which I hope will be captured in detail in the regulations. This is my humble plea.

I want to talk plain language, any addition or improvement for example the proviso that would limit this and subject it to review would help capture what I want to cure. Thank you.

**The Chairperson:** Thank you so much. The position is clear now, honourable members that notification aspects and otherwise are taken care of by 13(2) and (3).

What the honourable member is raising now is the period for which the temporary measure will last. If that period has lapsed before the conditions before the conditions for which it was put are still in existence then the authority must look for renewal. That is plainly what the honourable member has raised and that is where hon. Zein had conceded that he will come to provide an amendment to the position.

**Mr Kiangoi:** Thank you, Mr Chairperson. I think the two proposals are not at variance. We can cap the period at 12 months in the main Bill and then we make a provision for review as hon. Dora is saying in the regulations so that if the condition that necessitated the taking of temporary measures has been done away with in three months, there can be periodic reviews by those concerned; by the Council as may be provided for in the regulations.

I support the view that we have a cap here at 12 months and then make a provision in the regulations because it will not necessarily affect this but we say 'not exceeding 12 months'.

**The Chairperson:** Honourable members, the proposal is now clearer to all of us that we put a cap of 12 months for the temporal measure and the review will be dealt with in the regulations. That is the proposal that has been brought by hon. Kiangoi which from my view, takes care of all these concerns. If that is acceptable to members, I would put a question to the position as provided and agreed upon by hon. Kiangoi and the Clerk will put it into the perspective of the drafting. I put the question as proposed.

*(Question put and agreed to.)*

*Clause 13, as amended, agreed to.*

Clause 14

**The Chairperson:** Honourable members, the proposal is that clause 14 be part of the Bill.

**Dr Ndahiro:** Mr Chairperson, before clause 14, I was suggesting that I introduce three new clauses so that clause 14 can become clause 17 because of a new clause 15 and 16.

**The Chairperson:** Hon. Ndahiro, you are at liberty to introduce a new clause under clause 14.

**Dr Ndahiro:** Before clause 14, Mr Chairperson. A new 14. I have submitted the amendment and the chairperson of our committee has them. You remember the proposal in Part – Let the chairman first read the amendment and then – Thank you.

**The Chairperson:** Hon. Dr Ndahiro, I presume that you are introducing an idea that we stood over in cause 5 and then the amendment you have circulated under general provisions, if I am getting you right.

**Dr Ndahiro:** Yes, Mr Chairperson. That makes them three.

**Mr Mukasa Mbidde:** Mr Chairperson, the general provisions to the first clause – *(Interruption)* -

**The Chairperson:** Honourable chair, you are moving to create a new 14, which will read as the first.

**Mr Mukasa Mbidde:** Yes. That Partner States shall take all necessary steps to protect, preserve and promote the rights of persons with disabilities engaged in cross border trade or any other commercial activity.

**The Chairperson:** Seconder. Hon. Frederic, hon. Pareno, hon. Yves. Proceed, hon. Ndahiro to make the justification.

**Dr Ndahiro:** Thank you, Mr Chairperson. This Bill, as we mentioned in the objects, is trying to improve trade conditions to East Africans and as members would be aware, 19 per cent of East Africans have a disability of one kind or the other. We cannot afford to leave 19 per cent of our population without taking care of their needs which include trade and other business activities.

This particular amendment ensures that persons with disabilities are able to participate with all their rights and fully benefit from the integration and are fully permitted or facilitated to participate in the integration process. So the justification is that all Partner States have signed and ratified different instruments including the UN conventions on the rights of persons with disabilities, which has aspects of trade and commerce.

Second is that all the instruments of the Community, although not clearly put in terms of definitions as the conventions do, stand on the principle of non-discrimination.

When I spoke about the Common Market Protocol, I later realised that it covers non-discrimination but in this instance, on nationalities.

Mr Chairperson, I think it is clear we have a population that deserves to participate in economic activities because they have their ambitions and they have the obligation to participate and fulfil the needs of integration. Thank you, Mr Chairperson.

**The Chairperson:** Thank you, hon. Ndahiro for the justification which sounds very clear. Council, Chair of Ministers, do you have any objection to the amendment?

**Dr. Sadalla:** I do not have any objections, I concede with the amendment.

**The Chairperson:** Honourable members, I put the question on the amendment to introduce a new clause 14 by hon. Dr Ndahiro.

*(Question put and agreed to.)*

**The Chairperson:** That was a motion to introduce a new clause 14. Now I will put the question on 14(1) to be part of the Bill as has been passed.

*(Question put and agreed to.)*

**The Chairperson:** Now you can move your amendment on 14(2).

**Mr Mukasa Mbidde:** Mr Chairperson, 14(2) reads, ‘Partner states shall ensure that in the identification and elimination of NTBs, gender sensitive solutions shall be preserved.

**The Chairperson:** Seconder. Hon. Patricia. Hon. Pareno, were you rising on secondment? Before hon. Ndahiro goes ahead to justify, can I pick the procedural point from hon. Pareno?

**Ms Pareno:** Mr Chairperson, the new introduction by hon. Ndahiro cannot be a 14(1) because it cannot fall under the national focal points. It should be a 14 and then we have a 15, 16 and then our current 14 will become a 17.

**The Chairperson:** It is 14. The numbering will be dealt with. Thank you. Hon. Ndahiro, proceed.

**Dr Ndahiro:** Mr Chairperson, the justification is that in the process of eliminating NTBs, if we are not careful, we might create other NTBs. In the elimination of NTBs, there are things that are structural in nature, they are social in nature and things that if we take for granted, can actually promote or bring new NTBs. I will cite an example.

If we are totally in agreement that one border posts that we all favour is built and nobody bothers to check on the standards and you find that they have provided only safe areas for men, what would happen? Or, they have not provided health areas for persons who are using wheel chairs whether women or men. So structurally, we have to be careful that in the planning and identification of non-tariff barriers, we take consideration of our differences and specific needs.

In this main point I am referring to gender sensitive solutions because I know in the exercise of doing that, they will adhere to international standards that require those areas to be identified and that is only in terms of infrastructure. Thank you, Mr Chairperson.

**Mr Ogle:** Thank you very much, Mr Chairperson. I am not used to opposing my good friend and colleague in the Opposition bench but on this one I want to categorically object. It means nothing.

**The Chairperson:** For the sake of our records and the journal of this House, which is supposed to stand the test of time, you better be clear on the Opposition bench. In this House we do not have sides.

**Mr Ogle:** At an appropriate time we will move a motion to institutionalise and formalise his so as to create the vibrancy in Parliament.

Mr Chairperson, let me move on this one. I think hon. Dr Ndahiro is reading too much into these details. Seeking or particular rest places for women with children, breastfeeding women – I really want to object to it on that basis. I am not convinced.

**The Chairperson:** Thank you so much. There is an amendment by hon. Zein to the amendment moved by hon. Dr Ndahiro.

**Mr Zein:** Thank you, Mr Chairperson. First I would like to say that I disagree with hon. Ogle on matters of equity and equality and I would like to strongly support hon. James Ndahiro for thinking of this provision.

If you listen keenly to hon. Ndahiro, he also talked about people with disability but here it is only referring to gender sensitive solutions. I would like to persuade my brother that I would like to move a comprehensive amendment to his amendment to read as follows: ‘Affirmative action and other measures undertaken to address issues of equality and equity in the Community shall not be construed to constitute a non-tariff barrier.’

The reason why this is critical and I agree with him, is that the intention is to say that some of these things you are saying are non-tariff barriers for instance you provide for a special way of dealing with women or persons with disabilities or a special way of dealing with people in difficult circumstances, somebody can come and say, that is a non-tariff barrier.

So I am saying the intention is good but let us construct it in such a way that it allows for affirmative action and other measures in order to attain our aspirations under Article 6 of the Treaty for the establishment of the East African Community by saying, any measures that are undertaken to promote these things cannot be construed to mean that they are non-tariff barriers. I submit.

**The Chairperson:** Thank you. If I got hon. Zein, he is saying that affirmative action and other actions taken by the Community shall not be construed to constitute non-tariff barriers.

**Mr Mwinyi:** Thank you very much, Mr Chairperson. First of all I would like to agree with my friend hon. Dr James Ndahiro in relation to the matters that he has raised specifically on this clause.

However, I am not clear if it is captured correctly. For me, non-tariff barriers cannot have gender. We are creating a living body on a non-tariff barrier and that is what I am seeing here. I understand the sentiment but the manner in which we are placing it does not make sense.

There are so many forms of non-tariff barriers. For instance, *Mheshimiwa* was talking about a one stop border post but non-tariff barriers are much greater than that.

A provision of this nature that is completely unattached and issues of gender and persons with disabilities are covered under the Treaty so the best way to deal with this is to actually reference it to the Treaty and not reference it to a non-tariff barrier. It just does not make sense. Thank you.

**Dr Ndahiro:** We are talking of elimination and identification. Those are words in this Bill so we are saying in the process of identification and elimination, we want solutions for all.

**Mr Mwinyi:** I could not agree more and I thank him for strengthening my argument. Solutions for all but the manner in which you are capturing this is like we are making non-tariff barriers gender sensitive which again does not make sense. A non-tariff barrier is not a person.

**Mr Mukasa Mbidde:** Mr Chairperson, I am trying to assist hon. Mwinyi into the direction of the proposed amendment by hon. Ndahiro. That Partner States shall ensure that in the identification and elimination of NTBs- of course he missed out on the words ‘under this Act’ gender sensitive and obviously persons with disabilities solutions shall be preserved.

We can take an example. Under the amendments that we have so far taken, for purposes of elimination of these non-tariff barriers, we have included, among others, issuance of notices, gazette of such notices, and all those can – (*Inaudible*) -

What hon. Ndahiro is seeking to imply is that such gazette must take into account persons with disabilities. For example, how are you going to issue a gazette that can be read by hon. Ndahiro? We are looking at non-tariff barriers as including prohibitions and directions and decisions by Partner States and all these have got inclinations towards people.

The barriers to trade are barriers against activities by people so if people in East Africa include persons with disabilities and gender then obviously a law like this must look at them.

**The Chairperson:** I think the honourable Chair, CTI has put it so clearly that gender insensitive approaches can institute NTBs and disability insensitive ways can constitute NTBs so I take it that- DO you still want to rise on your clarification? It is done.

**Mr Taslima:** Thank you, Mr Chairperson. I was thinking in terms of having both persons with disabilities and gender sensitive solutions to be in one sentence which would read, ‘... shall take into account people with special needs’. What I mean by these special needs is that of recent this saying has taken ground to encompass all people who have this and that problems so that you do not have to mention just a few.

When you talk of gender and disability, that is not all but special needs can come at any one time during a process. Thank you, Mr Chairperson.

**The Chairperson:** Thank you so much. Hon. Taslima is being positive in the nomenclature but hon. Zein had moved an amendment and the gist of his amendment was to be inclusive enough of the persons with special needs as now presented by hon. Taslima.

**Dr Ndahiro:** Thank you, Mr Chairperson. The Chair of the committee has also moved an amendment. I do not know whether we are coming to that but the amendments moved by hon. Zein and the amendment moved by the chair of the committee all tilt in the same direction. I do not know how we can merge them into one otherwise I concede to their submissions.

**The Chairperson:** I think hon. Taslima has summarised it for us all. Gender sensitive and persons with special needs. I think that was the interest of hon. Zein. The Clerk and the draftspersons will put it in proper text. I now put the question to the amendment as moved by hon. Dr Ndahiro.

*(Question put and agreed to.)*

**The Chairperson:** That is a new clause 15. Yes, Dr Ndahiro.

**Dr Ndahiro:** Mr Chairperson, you remember on clause 5 we agreed that under the general provisions we shall provide for it so that we leave clause 5 intact as it was. Therefore there is a new clause 16 that I wanted hon. Patricia to read and see whether it could be considered to replace the amendment in 5(1).

**The Chairperson:** Hon. Dr Ndahiro, you are putting the chair in a very difficult situation because I do not have the text you are going to read from. It should have been brought prior. I think it is better we go back to 5, dispose it off...

... I am putting the question to clause 5. The proposal is that clause 5 be part of the Bill.

**Dr Ndahiro:** I had moved an amendment to that clause to incorporate ideas or principles of discrimination and I was advised that probably that idea can be captured under the general provision. That is why I wanted to introduce a new clause 16 so that if the committee finds it sufficient, we can now leave the provision in 5 as it was before the amendment and then take care of this new amendment of a new clause 16.

**The Chairperson:** Thank you so much. Hon. Ndahiro, you can resume your seat for a little time. You will be at liberty to move at that level but we cannot hold clause 5 hostage of that motion you are going to move in the general provisions. The proposal is that clause 5 be part of the Bill. I now put the question.

*(Question put and agreed to.)*

**The Chairperson:** Hon. Dr Ndahiro, you can move under the new clause.

**Dr Ndahiro:** Mr Chairperson, I had asked whether my colleague can read the amendment.

**The Chairperson:** Hon. Patricia, please.

**Ms Hajabakiga:** Thank you, Mr Chairperson. 'The Partner States shall not promote any customs procedures, measures or trade practices that are discriminatory in relation to age, gender, persons with disability and any other marginalised groups.' I submit, Mr Chairperson.

**The Chairperson:** Secunder. Hon. Straton, hon. Leonce, hon. Rwigema, hon. Dora. Hon. Dr Ndahiro, you can go on and justify.



**Dr Ndahiro:** Mr Chairperson, I think it is straightforward and clear because those terminologies are borrowed from the Treaty and these can be found under Article 120 of the Treaty and other provisions. So I do not think any member has any problem with that. Thank you, Mr Chairperson.

**Ms Byamukama:** Mr Chairperson, I have a problem with it. In principle support it. I think the issue, which was raised before was on the definition of the word discrimination and since then we have done some research on this table. We have the Convention on the rights of persons with disabilities. We also have the Convention on the elimination of all forms of discrimination against women and we have discovered, for the record, that discrimination means any distinction, exclusion or restriction made on the basis of sex, disability, age, race or any other status which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms.

We can add, as provided for under the Treaty. I think this will make the distinction clear so that whoever reads our record will know what we are referring to. I beg to move.

**The Chairperson:** Hon. Dr Ndahiro has benefitted from the redrafting by hon. Dora. Chair, Council of Ministers, do you have anything?

**Dr. Ndahiro:** Thank you, Mr Speaker. I concede with the new amendment but I cannot get the consistency between the persons with disabilities and persons with special needs. Which one should we take? I think the special needs are important.

**The Chairperson:** Thank you so much. We shall borrow the language of the Treaty and the most appropriate language. The drafters shall put it into perspective for consistency with other legal frameworks within the Community. I now put the question to the amendment as put by Dr Ndahiro of introducing a new clause.

*(Question put and agreed to.)*

**The Chairperson:** I now put the question that the amendment as moved by hon. Dr Ndahiro be part of the Bill.

*(Question put and agreed to.)*

**Mr Bazivamo:** Thank you, Mr Chairperson. I rise to propose a new clause after this one proposed by hon. Ndahiro. First of all let me welcome our new Member of Parliament, Mr Martin Ngoga because I have not done it until now and congratulate him for the quick integration I have observed from the time he was sworn in.

**The Chairperson:** Hon. Bazivamo, can you move your amendment?

**Mr Bazivamo:** The new clause will come following this proposal from Dr Ndahiro and it states, 'Partner States shall take appropriate measures to prevent and or take care –  
*(Interruption)*

**Dr. Ndahiro:** Thank you, Sir. I just need clarification as to whether it is possible to amend this thing without me having it in hand? Is it with you?

**The Chairperson:** Hon. Cristophe, you can resume your seat. I have just received the amendment from the honourable member and the law allows him to submit and move. You will be at liberty to agree or disagree. Hon. Bazivamo, proceed.

**Mr Bazivamo:** Thank you, Mr Chairperson. The idea is to prevent a negative impact, which can come or which exists with new technologies. My proposal is, 'partner States shall take appropriate measures to prevent and/or take care of negative impacts of new technologies.' Thank you.

**The Chairperson:** You have moved. Can I get anybody seconding? The member has moved an amendment. Any seconder? Hon. Sebalu, hon. Dora, hon. Rwigema and hon. Dr Ndahiro. Can you please justify in relation to elimination of NTBs?

**Mr Bazivamo:** Mr Chairperson, the idea is one can arrive at a one stop border post or border and people are claiming that they have no connection and no measure is taken to protect or prevent that. It can also happen that you arrive in an area and people are complaining about viruses which say, have destroyed the system. Measures should be taken in consideration in advance to prevent against such responses. Thank you.

**The Chairperson:** Debate is open. This motion got seconders. We would like to hear their point of secondment and defence for it.

**Mr Sebalu:** Thank you very much, Mr Chairperson. The import of this amendment is to mitigate negative effects, largely unforeseen that could have a bearing on allowing people free movement and free access to aspects of the region. He has illustrated it using technology like challenges of connectivity in some areas, network issues in some areas so that people are not disadvantaged by the failure of technology to be applied at an appropriate time.

With that Mr Chairperson, I beg to support.

**Mr Mathuki:** Thank you, Mr Chairperson. I tend to get the concept as right but I have a problem. When you want to foresee that a computer will be struck by a virus, how will you foresee this because you might get right at the border and then you are told that this particular machine has been struck by a virus? When we are making this hope and in every case of situation when we are making laws, we do make laws in good faith but how do we then put such a situation here that now a virus will strike?

Let us be careful that this law will protect viruses not to strike machines at the border or anything or even a natural calamity like lightning, thunderstorm may strike and these are things we cannot foresee but when we start legislating and putting them in law I have a difficulty.

However with a lot of due respect to my friends and colleague, hon. Bazivamo, I request for more clarification. With the justification that he has given, I have difficulties.

**The Chairperson:** Before I take hon. Ngoga Martin, honourable members as we move amendments, let us look at the enforcement mechanism and possibilities and we see how best our amendments can be accommodated.

**Mr Ngoga:** Thank you very much, Mr Chairman. I appreciate the fact that these eventualities do happen and they cause losses to the business community. They become real impediments but there are two ways they can happen. One is from what I may call *force majeure* that we can do nothing about it in terms of planning for it or putting in place preventative measures.

The other way they can happen is if it is a deliberate act by those who use these technologies and that is already taken care of in clause 6 in terms of remedies, prevention and everything. So I think we can appreciate the fact that those eventualities do happen but they pose no serious risk given what we already have in the Bill.

**Dr. Sadalla:** Mr Chairman, I disagree with this amendment because first of all we cannot put everything inside there. There are fuel issues, electronic issues and many others.

Secondly, hon. Ngoga read my mind and it is there captured in Chapter 6 in all those aspects whether intentional or non-intentional. So I disagree with it.

**The Chairperson:** Thank you. With that debate, I want to put the question if the amendment as moved by hon. Christophe.

*(Question put and negated.)*

Original Clause 14 of the Bill

**The Chairperson:** Honourable members, the proposal is that the original clause 14 be part of the Bill. I now put the question –

**Ms Byamukama:** Mr Chairman, I stand to be guided. I am looking at the old set of rules and I know there have been changes but I do have an amendment on the previous clause 15.

**The Chairperson:** Which is okay but we are still on the original clause 14. I put the question that clause 14 as per the Bill be part of the Bill.

*(Question put and agreed to.)*

Clause 15

**The Chairperson:** I propose that clause 15 be part of the Bill. Hon. Dora.

**Ms Byamukama:** Mr Chairman, I have an amendment on clause 15 and this amendment reads as follows: 15(2) This is on the role of the Council on elimination of non-trade ... bias. 'For the purpose of sub section (1), the Council shall (a) receive periodic reports which reports shall be tabled on non-tariff barriers that exist in Partner States, which reports shall be tabled in the Assembly at least bi-annually for consideration.' I beg to propose.

**The Chairperson:** Secunder. Hon. Ogle, hon. Dr Ndahiro, hon. Frederic, hon. Valerie. Hon. Dora, proceed.

**Ms Byamukama:** Mr Chairman, this proposal takes into account several issues. The first is the fact that under the Treaty, the Council receives reports and actually tables these reports in

the Assembly for consideration. I have inserted in 'at least bi-annually' to ensure that every time the Council of Ministers gives us a report, it has a component or it can even be more often.

Secondly, it also encompasses the proposal by hon. Zein. I would really like to ... I think the idea that he had is that the Assembly should be seized with an opportunity to be able to proactively intervene on this matter of non-tariff barriers. So I am open to any other amendments but the point is that once we discuss it, we can make recommendations and give some form of demand for certain actions and therefore it will provide us with space to be able to ensure that this law is properly utilised and operationalised.

**Mr Ngoga:** Thank you, Mr Chairman. I agree entirely with the idea of the Assembly receiving these reports from the Council but I do not see clearly what the role of the Council is going to be because the way it is drafted is as if they will just receive reports. It is not clear from who and whether they just act as conduits and send them to the Assembly or they do something about it.

In the alternative, I think we should draft it in a way that requires the Council to report to the Assembly and not receive reports and table them to the Assembly. I am assuming that it is not inconsistent with any other provisions of the Treaty but the way it is here, they receive reports from whom? What do they do about them before they table them to the Assembly?

**The Chairperson:** Honourable, you are in order. For it to flow so well, you need to read the entire 15 as per the Bill then the flow will be very clear. Chair, Council of Ministers.

**Dr. Sadalla:** Thank you, Mr Chairman. As I read the original version of (2), it says that, 'For the purpose of sub section 1, the Council shall receive periodic reports on the non-tariff barriers that exist in the Partner States'. This is the obligation of the Secretariat to write to us as Council and if I read Article 49 (2) (c), which talks about the East African Legislative Assembly that shall consider annual reports of activities of the Community.

So even though the Council gets it biannually, there is an obligation of the Council to table and report and probably discuss this annually. Practically I do not think it will be possible to do it bi-annually so I disagree with this amendment. I prefer it to remain as it is. Thank you.

**Mr Zein:** Thank you, Mr Chairman. I would like to inform this House and by that extension to the honourable minister as well that the requirement under 49(c) is on the overall activities of the Community and that includes Organs and institutions of the Community. This has been done every year but what is being asked for is a specific report concerning non-tariff barriers.

That is a different report from the one envisaged by 49(2) (c) and this House can seek any other report by either law or by resolution. So by providing it as part of the law, we will be making the Council to be duty bound to report to this House on non-tariff barriers and it is absolutely important for this House, which is the custodian of the wishes and aspirations of people in East Africa to have a report on what is going on as far as non-tariff barriers are concerned and to have a say in it. Thank you, sir.

**The Chairperson:** Let us put some clarification. Hon. Dora is moving that the Council of Ministers receives the report twice a year and reports to the Assembly twice a year also or bi-annually. Hon. Dora, please clarify on that as we need to get this clear.

**Ms Byamukama:** Mr Chairman I am cognisant of the fact that the Council of Ministers is mandated to meet bi-annually but I have also provided very clearly that this should be at least bi-annually. This is to leave room for this Assembly to be able to raise questions, make recommendations and make other provisions but if we are going to get a Council report like hon. Zein has said, we would like it to encompass an element of what has happened on the issue of NTBs.

I wish the honourable Chair, Council had read Article 49 (2) (c) to its conclusion. It states, *“The Assembly shall consider annual reports on the activities of the Community, annual audit reports of the Audit Commission and any other reports referred to it by the Council.”*

By virtue of this, we are using this same premise to ask the Council to refer the Assembly reports on NTBs. This is in good faith. We shall help you as an enforcement mechanism. We also speak for the East Africans so when you make such reports, maybe the committees of this House may have other findings, recommendations or additions which will help us ensure that we eliminate non-tariff barriers.

I am moving this in good faith and therefore I implore you and I can see you are already consenting. I hope you will consent officially. Thank you.

**Dr. Saadalla:** Thank you, Mr Chairman. I agree with the submission of reports of NTBs to the House I do not have any problem with that but practically and according to this same Treaty Article 49, it provides for the Council to present it annually not twice a year. So we will be ready to present it annually, there is no problem with that. But stating twice a year- That practicability is not possible. Once a year at the end of the year as an annual report and this will be included in our annual report.

**Ms Byamukama:** I concede and thank the Chair, Council for being very understanding. I concede to at least annually. Thank you.

**The Chairman:** Thank you so much, honourable Chair, Council of Ministers and hon. Dora. I now put the question on the amendment as moved by hon. Dora.

*(Question put and agreed to.)*

*Clause 15, as amended in the parent Bill, agreed to.*

Clause 16

**The Chairperson:** Honourable members, the proposal is that clause 16 be part of the Bill. I now put the question.

*(Question put and agreed to.)*

Clause 17

**The Chairperson:** Honourable members, the proposal is that clause 17 be part of the Bill.

**Mr Taslima:** I thank you, Mr Chairman. I had proposed an amendment on the word ‘may’. We all know that ‘may’ means optional. They can do or they cannot. Looking at the need of having regulations, the need is so urgent that we need to put –

**The Chairperson:** You are justifying before secondment. Is there somebody seconding? Honourable chairperson, hon. Maryam. You can go ahead.

**Mr Taslima:** Thank you, Mr Chairman. I am saying that since ‘may’ means something optional, we should not give room to the Council to opt to or not to make regulations. The way I see it, we should say, ‘the Council shall make regulations’.

**Dr. Saadalla:** I concede, sir.

**The Chairperson:** The Chair, Council has conceded. I now put the question on the amendment moved by hon. Taslima.

*(Question put and agreed to.)*

*Clause 17, as amended, agreed to.*

Clause 18

**The Chairperson:** Honourable members, the proposal is that clause 18 be part of the Bill. I now put the question.

*(Question put and agreed to.)*

The Schedule

**The Chairperson:** Honourable members, the proposal is that the Schedule be part of the Bill. I now put the question.

*(Question put and agreed to.)*

The Title

**The Chairperson:** Honourable members, the proposal is that the Title of the Bill be part of the Bill. I now put the question.

*(Question put and agreed to.)*

### **MOTION FOR THE HOUSE TO RESUME**

**The Assistant Minister for East African Cooperation, Tanzania (Dr Abdallah Saadalla Abdalla) (Ex-Officio):** Mr Chairman, I beg to move that the House do resume and the Committee of the whole House reports thereto.

**The Chairperson:** Honourable members, the motion is that the House do resume and report thereto. I put the question.

*(Question put and agreed to.)*

*(The Assembly resumed, the Speaker presiding)*

**BILLS**  
**Report Stage**

The East African Community Elimination of Non-Tariff Barriers Bill, 2015

**The Assistant Minister for East African Cooperation, Tanzania (Dr Abdallah Saadalla Abdalla) (Ex-Officio):** Mr Speaker, I beg to report that the Committee of the Whole House has considered the Bill entitled *the East African Community Elimination of Non-Tariff Barriers Bill, 2015*, and has approved it with some amendments.

**BILLS**  
**Third Reading**

The East African Community Elimination of Non-Tariff Barriers Bill, 2015

**The Assistant Minister for East African Cooperation, Tanzania (Dr Abdallah Saadalla Abdalla) (Ex-Officio):** Mr Speaker, I beg to move that A Bill for an Act entitled *the East African Community Elimination of Non-Tariff Barriers Bill 2015* be read the Third Time and do pass.

Mr...: Seconded

Bill read a Third Time.

**The Speaker:** Communication from the Chair...

**The Speaker:** Honourable Members, with that we have come to the end of business today. The House is adjourned until tomorrow at 2.30 p.m. The House stands adjourned.

*(The Assembly rose at 6.15 p.m. and adjourned until Wednesday, 25 March 2015 at 2.30 p.m.)*