



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY

45TH SITTING - FIRST ASSEMBLY: FIRST MEETING – FOURTH SESSION

Official Report of the Proceedings of the East African Legislative Assembly

Tuesday, 14 December 2004

The East African Legislative Assembly met at 9.00 a.m. at the Chamber of the Assembly on the Sixth Floor, Ngorongoro Wing, AICC Building, Arusha.

PRAYERS

[The Speaker, Hon. Abdulrahman Kinana in the Chair]

The Assembly was called to Order.

LAYING OF PAPERS

The following Paper was laid on the Table:-

The Report of the Committee on Communications, Trade and Investment on the East African Customs Management Bill, 2004

(By the Chairperson, Committee on Communications, Trade and Investment)

BILLS SECOND READING

The East African Customs Management Bill, 2004

The Chairperson, Council of Ministers (Mr. Jakaya Kikwete): Hon. Speaker, I beg to move that the East African Customs Management Bill,

2004, be read the Second Time at this first sitting of the Fourth Session. This sitting is important as it has a bearing on the indicative programme for the implementation of the Protocol on the Establishment of the East African Community Customs Union. The outcome of this sitting will facilitate the enactment of the East African Community Customs Management Bill into law.

The Customs Management Bill, hon. Speaker, is of particular significance in the process of building the East African Community. After this Bill is passed and becomes law, the East African Customs Union can then become effective and truly operational.

Allow me to remind this August House of something it already knows: The East African Community Partner States have

agreed that the establishment of an East African Customs Union is the entry point in the process of integration of their economies and nations. The common market and the monetary union are subsequent transitional stages, which will ultimately culminate in a political federation.

Over the last five years, the attainment of these projections has guided the Partner States' policy rationalisation and harmonisation. They have in this regard guided the Council of Ministers in drawing up the East African Community Development Strategy 2001 – 2005 and to enhance the numerous decisions and actions taken. The signing of the Treaty Establishing the East African Community on 30 November 1999 to this day has been a guide. Among key cornerstones of this strategy is the development and adoption of an East African trade regime with a customs union and a common market.

Mr Speaker, in accordance with the provisions of Article 75(7) of the Treaty for the Establishment of the East African Community, the Partner States negotiated and concluded a Protocol on the Establishment of an East African Community Customs Union. On 2 March 2004, the three East African Heads of State, H.E. President Yoweri Kaguta Museveni of the Republic of Uganda, H.E. President Benjamin William Mkapa of the United Republic of Tanzania and H.E. President Mwai Kibaki of the Republic of Kenya signed the Customs Union Protocol. The Protocol will become operational on 1 January 2005.

The Customs Union Protocol provides for policy on the following aspects of trade and development:

- i. The elimination of internal tariffs and elimination of non-tariff barriers as well as the establishment of a common external tariff. The three partner states have agreed that as from 1 January 2005, goods from Uganda and Tanzania will enter the East African market at 0 tariff rate. However, goods from Kenya will attract duty for a period of five years. This is the case with goods from Kenya in order to protect young industries from Uganda and Tanzania. This is in the spirit of implementing the principle of asymmetry;
- ii. Trade related aspects (including Rules of Origin; national treatment; anti-dumping measures; subsidies and countervailing measures; safeguard measures; competition; re-exportation of goods and restrictions and prohibitions to trade);
- iii. Customs administration (including harmonised commodity description and coding system; harmonised trade information and documentation; and trade facilitation);
- iv. Export promotion schemes (including duty drawback schemes; manufacturing under bond schemes; duty and value added tax remission schemes; and export processing zones);
- v. Special Economic Zones such as free ports; and
- vi. Exemption regimes.

Mr Speaker, the Protocol also provides for measures to address imbalances arising out of the establishment of the Customs Union, as well as mechanisms for handling trade arrangements with countries and organisations outside the Customs Union, and for a common customs law of the Community. Appropriate and satisfactory measures for addressing imbalances are critical for the healthy evolution of our regional organization, and for a stable East African Community.

Mr Speaker, at its ninth meeting, the Council of Ministers, upon recommendation by the Sectoral Council on Legal and Judicial Affairs, approved and adopted the East African Community Customs Management Bill and the East African Community Competition Bill. These two bills translate the Community's policy on trade liberalisation and development, which is epitomised by the Customs Union Protocol, into law. The principal object of the Customs Management Bill is to provide for the management and administration of customs, and for related matters in the East African Community Customs Union.

Once enacted into law, this Bill will provide a sound foundation for the customs union regime. It will be a foundation which will largely supersede similar national systems in matters pertaining to regional trade liberalisation. The estimate outcome of this will be the realisation of fast balanced and sustainable development. This is one of the cardinal objectives of the integration process. It is also one of those developments that are expected to bring tangible results to the peoples of East Africa.

Mr Speaker, sir, given this background to this Bill, I urge the Legislative Assembly to expedite consideration of this Bill, and later the Competition Bill, and their enactment into law. For reasons beyond the control of the Council, the preparation and finalisation of the Bill took longer than anticipated. However, we should not be oblivious of the fact that in legislating for trade liberalisation in the Community as it is now, the Partner States are embarking on fresh ground. In that case, taking caution and ensuring consensus on most points of policy underlying the proposed legislation was important.

Mr Speaker, these unforeseen circumstances notwithstanding, I once again urge the Legislative Assembly to expedite the consideration of this Bill in order to ensure the law is in place by 1 January 2005. It is in this regard that I crave the indulgence of this House to treat the matter expeditiously. It is not the intention of the Council to seek a discharge of business in this manner. The Council has profound respect for this House and is fully seized of the primary requirement to handle Bills in accordance with the rules relating to legislative procedures. This necessitates according the Committee on Trade, Communication and Investment, and indeed all the honourable Members of this House, sufficient time to read, understand and appreciate the content of the Bill. As I have stated, for reasons beyond the Council's control, this was not possible. But there is urgent need for us to progress.

I believe, hon. Speaker that the honourable members will, in the spirit of fast tracking the integration process, appreciate the circumstances in which

the East African Community Customs Management Bill has been introduced. Allow me at this juncture to express the Council's sincere appreciation to you, honourable Speaker and honourable Members, for the sterling decision taken on 29 November 2004 determining that this Bill was urgent and should be introduced without publication. Subsequently the Bill was read the First Time. I am glad to inform this esteemed House that since then the process of publication has been embarked on and is at an advanced stage.

Mr Speaker, I would also like to thank the Committee on Communication, Trade and Investment to which the Bill was committed for having studied the details of the Bill. It is my sincere belief that the work of the Committee will facilitate the deeper consideration of this Bill with a view to logically advancing it through the Third Reading.

Mr Speaker, permit me to highlight to this august House the salient details of the East African Community Customs Management Bill. Allow me to pinpoint a typographical error: The proper title of the Bill is the "East African Community Customs Management Bill." In the distributed copies, the words "East African Community" were unfortunately omitted. The highlight of the Bill can best be done by referring to Bill's contents as follows:

Part I provides for the Short Title of the proposed Act, its applicability to all the Partner States and its commencement on a date to be appointed by the Council of Ministers. It also provides for definitions of terms and expressions used in the Act.

Under this part I wish to draw the attention of this esteemed House to the fact that the Bill, in accordance with the agreed policy, is providing for transitional arrangements. These arrangements include a decentralized system of customs facilitation and management based on the principle of subsidiarity as provided for within the context of the operational principles of the East African Community.

In this regard, the already established East African Community Directorate of Customs and Trade will be charged with the handling of policy issues. However, for practical progress, including the collection of revenue, the East African Community will rely on the Partner States' revenue authorities, and in principle, the Customs departments. Therefore the customs facilitation and management provided under the Bill seeks to establish a relationship between the directorate at the East African Community and customs departments of the Partner States. To this extent a legal framework comprising of appropriate regulations and the establishment of a liaison committee to serve the directorate in addressing policy issues and customs departments in discharging day-to-day operations will be provided for.

Allow me also to point out that on the basis of the provisions of Article 75(1) of the Treaty for the Establishment of the East African Community, and parts D to H (Articles 10 to 33) of the Protocol on the Establishment of the East African Community Customs Union, the Directorate of Customs and Trade will among its functions handle matters related to trade as they impact on

customs facilitation in particular, and the East African trade regime in general.

Part II provides for overall administration of the East African Community Customs Union, including the functions and staffing of the East African Community Directorate of Customs and Trade as established by the Treaty. It makes provisions for the mode of discharge of duties at border controls, ports, customs areas and other areas of operations. Provision is also made for the powers of designated staff of the directorate.

Part III provides for importation of goods into the Partner States from a foreign country. The provisions specifically cater for handling of prohibited and restricted imports; arrival and report of aircraft and vessels; overland arrivals; clearance by pipeline; unloading and removal of cargo; entry, examination and delivery of cargo; the use of customs warehouses and handling of goods deposited therein; and passenger clearance.

Part IV provides for the warehousing of dutiable goods. It outlines the procedure on warehousing, and specifically outlines the manner for entry and removal of goods; re-gauging and re-valuation; management, licensing and control of warehouses and warehoused goods. It also caters for access to warehouses and removal of goods from one warehouse to another.

Part V makes provision for the exportation of goods from the Partner States to a foreign country. The provisions specifically cater for the handling of prohibited and restricted goods; entries of cargo for export; loading of exportable goods on aircraft

and vessels; departure overland and treatment of goods in transit or meant for transshipment.

Part VI provides for departure and clearance of aircraft and vessels used in the delivery of cargo from any port or place in a Partner State to any foreign port.

Part VII provides for importation and exportation by post and outlines the mode for carriage of postal articles through the Post Office or registered courier services.

Part VIII sets out legal guidelines on carriage coast wide, and transfer of goods (conveyed by land, sea or air, from any part of a Partner State to another part thereof).

Part IX makes provision for instances where there is need to give security for the due compliance with the provisions of the Act, and generally for the protection of the customs revenue within the decentralized system that will serve during the transitional arrangements. This includes the use of approved and enforceable bonds and sureties.

Part X provides for the application of preferential treatment to goods imported under COMESA and SADC arrangements in accordance with Partner States' legislation for purposes of the implementation of Article 37 of the Protocol, and generally addressing trade facilitation in the context of customs facilitation and management. It also provides for liability for import duty, including imposition of import duty on goods; the exemption of certain goods such as re-imports from duty; computation of duty; mode of payment

of duty. Provision is also made for exemption regimes; anti-dumping and countervailing duties; drawbacks, remission; rebate and refund of duty.

Mr Speaker, sir, I am fully aware of the fact that for purposes of establishing the East African trade regime and rationalizing the Partner States' trade arrangements with other regional organizations, there are on-going studies which are expected to inform appropriate Council decision. Nevertheless during the transitional period, and in order to address those trade facilitation issues related to our customs regime, it is important that we provide in this Bill for the preferential treatment of goods as contained in Article 112 of this Bill.

Part XI provides for the licensing and authority of customs agents and determines their roles and liabilities.

Part XII makes provision for the prevention of smuggling. It creates powers of arrest, search and impounding of offending vessels, persons and premises.

Part XIII provides for manufacturing under bond.

Part XIV provides for export processing zones and free ports.

Part XV provides for inward processing procedure whereby goods can be brought into a Partner State conditionally exempted from duty where such goods are intended for manufacturing, processing or repair and subsequent exportation. It also makes provision for outward processing whereby goods which are in free

circulation in a Partner State may be temporarily exported for manufacturing, processing or repair outside the Partner State, and thereafter be re-imported.

Part XVI provides for the application of information technology appropriately in handling customs formalities.

Part XVII creates specific offences in customs matters. It also provides for the respective penalties for such offences including forfeitures and seizures.

Part XVIII empowers the Commissioner of Customs in each Partner State to settle certain cases. This power is within such limits as are necessary for purely administrative actions. It will be exercised in such a manner as not to infringe on the role of the East African Committee on Trade Remedies or the East African Court of Justice, as the Community's judicial organ.

Part XIX provides for the institution and conduct of legal proceedings including stipulating the courts with appropriate jurisdiction, the evidential requirements and powers to prosecute customs offenders.

Part XX provides for judicial review of administrative actions and appeals.

Part XXI provides for a number of general matters including the making of regulations; savings and transitional matters, precedence of the Act and application of special law e.g. air legislation. The regulations provided in Section 252 will be made an integral part of the Act as Schedule Eight.

Mr Speaker, I would like to express my appreciation to the Committee on

Communications, Trade and Investment for having addressed various provisions which contain typographical errors or are part of proper, unequivocal and unambiguous drafting. These include various matters under Sections 6, 10, 17, 83, 84, 107, 141, 193, 248 and 252. These matters will be addressed appropriately in order to remove ambiguities and, in some cases like section 248, to remove superfluity.

Mr Speaker, sir, I beg to move that the East African Community Customs Management Bill be read a second time – *(Applause)*.

The Speaker: Honourable Members, before I proceed, I wish to have some consultations with the Chairman of the Council of Ministers and Secretary General on an urgent matter. I will therefore suspend the proceedings of this House for half an hour.

(Sitting suspended at 9.50 a.m. and resumed at 10.20 a.m.)

The Speaker: Honourable Members, the Speaker needs more time to consult, and therefore the House is adjourned until 4.00 O' Clock this afternoon.

(The Assembly rose at 10.21 a.m. and adjourned until 4.00 p.m.)

PRAYER

(The Speaker, Hon. Abdulrahman Kinana in the Chair)

BILLS SECOND READING

The East African Customs Union Management Bill, 2004

(Resumption of debate suspended in the morning)

The Speaker: Any Member wishing to second?

The Secretary General (Mr. Amanyu Mushega): Seconded.

(Question proposed)

Mr. Ochieng-Mbeo: On a point of order, Mr. Speaker, without having to appear on the *Hansard*, I hope something has to be done before we continue with debate. So, can we get some clarification on this issue?

The Speaker: What issues? Could you elaborate?

Mr. Ochieng-Mbeo: Mr. Speaker, sir, in the morning we suspended the House because we were still going through our documents to confirm that all the documents were with us. Now that we have come in the afternoon, we would like the Chairperson of the Council to confirm that all the documents are in order and are with us.

The Speaker: I wish to call upon the hon. Minister. As you are all aware, we had consultations this morning, time was not enough and we continued until we resumed this afternoon. So I now call upon the Minister to assure the House that the documents are in order.

The Chairperson of the Council of Ministers (Mr. Jakaya Kikwete (Ex-Officio, Tanzania): Honourable Speaker let me confirm that all the documentation is in order. We have received all the instruments of ratification from the three Partner States.

REPORT OF THE COMMITTEE ON COMMUNICATIONS, TRADE AND INVESTMENT ON THE EAST AFRICAN CUSTOMS MANAGEMENT BILL, 2004

The Chairperson Committee on Communications, Trade and Investment (Mr George Nangale): Mr. Speaker, on 1 December 2004, the Chairperson of the Council of Ministers, Hon. Jakaya M. Kikwete, introduced in the House a Bill entitled the “East African Customs Management Bill, 2004”. Mr Speaker, the Chairman of the Council moved the Second Reading of this Bill this morning.

The main object of this Bill is to provide for the management and administration of Customs and for related matters as envisaged by Article 75 of the Treaty, and in particular, to operationalize the Protocol on the East African Customs Union.

In accordance with the Rules of this House, the Bill was referred to the Committee on Communications, Trade and Investment for consideration and later report to the House. Mr. Speaker, sir, on behalf of the Committee, I beg to present the report to the House.

Consideration of the Bill by the Committee:

The Committee considered the Bill first as a Committee, and then invited staff from the East African Community Secretariat to assist in explaining the policy, and where necessary, the rationale behind each provision.

The Committee, due to time limitations, did not consult as many people as it had planned, but Members of the Committee

individually managed to make further consultations with stakeholders in the region.

Mr. Speaker, the Committee would have wished to have been given more time to examine this Bill in detail due to its complexity. There was a delay in bringing the Bill before the Assembly and yet the deadline for the operationalisation of the Protocol on Customs Union had already been set for January 2005.

Mr Speaker, sir, in order to save the credibility of the East African Community, the Committee accepted to work within the limited time frame. This acceptance to do the work under this tight schedule was for the sake of the people of East Africa, whom this Assembly holds in high esteem and on whose behalf we shall continue to toil. Mr Speaker sir, this flexibility should not be taken for granted – (*Applause*). The Committee, and indeed this Assembly, will continue to set the pace and to show that most of the objectives we set forth to achieve, can be achieved.

Part I - Preliminary Provisions:

Mr Speaker, Sir, this part provides for the preliminary provisions. It stipulates the application and commencement of the Act, and provides interpretation of the various words used in this Act.

The Committee noted that there is no specific date provided for commencement, but allows the Council of Ministers to determine such date. The Committee recommends that since the operationalisation of the Protocol had already been set for January 2005, the commencement date be 1 January 2005.

The Committee also noted that some words were not defined on the interpretation clause. The Committee therefore recommends that the following words be defined for the purpose of avoiding ambiguities. These are:

- a. Council
- b. Gazette
- c. Partner States

Part II - Administration of Customs

Mr. Speaker, sir, this part provides for the overall administration of the East African Customs. It also makes provision (Clauses 3 & 4) for the functions and staffing of the Directorate of Customs and Trade, and for the appointment of Commissioners of Customs in Partner States.

Mandate of the Directorate:

Clause 3 establishes the Directorate and Director General of Customs and Trade, while Clause 4 spells out the functions of this directorate. The Committee noted that the proposed directorate is to be named the Directorate of Customs and Trade, and the Director General given powers to co-ordinate and monitor customs and trade related negotiations as well as the facilitation of trade remedies and dispute settlements.

Mr. Speaker, sir, this law is about customs management and not trade liberalization. Much as the Protocol Establishing the Customs Union refers to both customs management and trade liberalization and other trade related aspects, issues of trade facilitation and negotiations should be governed under a different and specific law. Customs management is about policing customs for revenue, while trade encompasses

more complex issues including negotiations, exchange of goods and services. The two are therefore not the same. To combine the two in this Act would only serve to undermine the aspects of trade.

Similarly, Mr. Speaker, the issues of dispute settlement and trade remedies cannot be referred to the Directorate of Customs and Trade when East Africa has a fully fledged Court of Justice. The directorate cannot be seen to be a judge in its own case.

Under Article 151 of the Treaty, the Protocol on the Customs Union is part of the Treaty. Article 27 (1) of the Treaty gives the East African Court of Justice jurisdiction over the interpretation and application of the Treaty, which includes this Protocol. If this jurisdiction is not enough for the Court to handle disputes arising out of the Protocol on the Customs Union, then this is the most suitable time for the Council to ensure the speedy extension of the Court's jurisdiction to handle dispute settlements arising out of customs management. Further, Article 24 of the Protocol establishes the East African Committee on Trade Remedies. There is therefore no justification as to why this function should again be conferred to the Directorate.

The Committee therefore recommends that:-

1. Clauses 3 and 4 as provided for in the Bill should be deleted as this directorate and its Director General already exist, and there is therefore no need to mention them in this Bill.

2. The Council of Ministers should table another Bill, which this Committee considers as urgent; to deal exclusively with trade related aspects.

Appointment of Commissioners of Customs:

Mr. Speaker, Sir, Clause 5 makes provision for the appointment of a Commissioner responsible for Management of Customs and other staff in accordance with Partner States' legislation for the management of customs by each of the Partner States. Although the Bill proposes that these commissioners are to be monitored by the director general, nothing is mentioned on the practical linkages between the director general and the commissioners. This arrangement is made much more complex in that while the director general is an appointee of the East African Community, the commissioners who will actually manage the customs are appointees of the Partner States. The loyalty and responsibility to duty of these commissioners will therefore still lie in their individual Partner States.

The explanation given to the Committee for this provision was that because of the principle of subsidiarity, revenue collection can be best handled at the Partner States level for the time being; that collection of revenue at the centre will require an agreement between the Partner States on how to manage the finances, appropriation and distribution of revenue and costs and that the negotiation for the establishment of a centralized customs administration will be done in the transitional period of five years.

Mr. Speaker, sir, the Committee appreciates the difficulties regarding centralized customs administration at present due to the nature of the principles of subsidiarity and asymmetry, but the Committee is of the view that there is no rationale for the Partner States to enter into new negotiations on how the customs administration can be centralized – *(Applause)*.

The Committee therefore recommends that:

1. Clause 5 of the Bill should create a clear structure through which the commissioners of customs in Partner States will have a formal functional and reporting relationship with the Secretariat.
2. During the transitional period, this Act should provide that commissioners (or commissioner generals or directors general as they are called in some Partner States) now responsible for customs management in each Partner State should be charged with the management and administration of customs under this Act until such a time when the Customs Union is fully fledged and its administrative structure well established.
3. Within this transitional period, the existing Directorate of Customs and Trade should be strengthened and capacitated in readiness to take over the management of a centralized customs administration five years from now.

The Customs Seal and Flag:

Mr. Speaker, Clause 6 of the Bill establishes both the customs seal and the customs flag. As with all Acts establishing emblems, the sample of such emblem must be provided for in the Act to avoid any possible ambiguities.

The Committee recommends that Clause 6 should therefore be amended to provide for the seventh schedule, which will provide the design and description of both the seal and the flag. Mr Speaker, during our consideration of this bill we were informed that the Council of Ministers has decided to adopt the former East African Community flag and seal for the Customs Union but it is not included as part of this Bill. So we are recommending that it should come as the Seventh Schedule of this Bill.

Remission of Revenue Collected:

Mr. Speaker, sir, it is in everyone's projection that these processes and stages of integration are aimed at creating a single political entity for East Africa in terms of a federation. Indeed, a Committee of eminent East Africans appointed by the Summit has categorically stated that the federation is achievable by the year 2010. What is important therefore is the need to put in place practices that will allow a smooth transition to that stage – *(Applause)*.

The Committee noted that funding of the Community is crucial to its effective functioning. While the Bill is silent on this aspect, this Committee recommends that this can be done through either remission of a percentage of revenue collected at customs or of the countries' export earnings – *(Applause)*. The

Committee is aware that as much as this policy would be the most desirable, the Treaty provides a different formula altogether, and that is: “the Community shall be financed by equal contributions by Partner States”.

The Committee therefore recommends that a revision of the Treaty with regard to the budget and the funding of the Community should be undertaken as a matter of priority with a view to providing the best formula in this regard – *(Applause)*. Mr Speaker, sir, this is in line with the principle of subsidiarity.

Part X: Duties

Preferential Tariff Treatment under COMESA and SADC Arrangements:

Mr. Speaker, the Bill seeks to make it clear that there shall be preferential tariff treatment applied to goods imported under the COMESA and SADC arrangements in accordance with the Partner States' legislations. Of course there is no alternative to this provision as long as the three Partner States continue to belong to two different trading blocs, and for the fact that Article 37 of the Protocol and Article 130 of the Treaty require Partner States to honour such commitments.

Although the law will require certification as to the origin of the goods, the problem lies as to what practical measures really exist to control abuse. For instance, a shrewd businessman in Uganda or Kenya would import goods from Egypt – Egypt is a member of COMESA - re-packages them in Uganda and sells them in Tanzania as Ugandan goods. A similar scenario will indeed occur with goods imported into Tanzania – Tanzania being a member of SADC -

from South Africa and sold into Kenya and Uganda as Tanzanian goods. The effect will be that many goods that were not supposed to enjoy preferential market access will flood our economies from those stronger economies than ours with only one result; that is the collapse of our infant industries dealing in similar goods.

Mr. Speaker, East Africa decided over four years ago that it intended to become a Customs Union. Partner States should have then initiated the process of pulling out of those blocs they belonged to individually in readiness to join COMESA or SADC or both as a single bloc! As no state in a customs union can belong to different customs unions the only remedy is for East Africa to take a decision quickly to join whichever trading blocs it chooses, but as a single entity – *(Applause)*.

Powers of the Council:

Mr. Speaker, throughout the Bill, numerous powers of putting into effect the operationalisation of various sections of the law are vested in the Council. The background to this is that the proposed law is a mere harmonization of customs laws of Partner States, where such powers are vested in the Ministers of Finance. However, the circumstances under which the Council operates within the ambit of the East African Community are different and well known to all of us. Much as the Ministers of Finance in Partner States are available all the time to take decisions, the Council of Ministers at times has failed to meet for over six months. Mr Speaker sir, how will this law then be implemented? *(Applause)*

The Committee recommends that the Council, under its own Rules of Procedure should, as a matter of urgency, take a decision in this regard, including the possibility of delegating this function to the Finance Ministers of Partner States, until of course we have resident ministers in Arusha.

Regulations under this Act

Mr. Speaker, this Bill provides for regulations to be made for the efficient administration of the Act. In the meantime, all the regulations and warrants in force under the Partner States' customs laws shall continue to be in force. The Bill does not give a time limit within which these regulations will continue to apply. Although the Committee was informed that experts are currently working on these regulations, it is important for this assembly to be assured that the saving provisions in the Bill do not intend to have the regulations in Partner States to apply indefinitely.

The committee therefore recommends that the Council should give a directive as to when these harmonized regulations should be finalized and therefore form part of the Act – *(Applause)*.

Conclusion:

Mr. Speaker, to conclude I wish to take this opportunity to thank my colleagues the Members of the Committee for having worked tirelessly in order to be able to produce this report in a record seven days time – *(Applause)*.

The Committee also extends a special word of thanks to honourable Members who gave us their input; staff from the

Secretariat, notably Mr. Ahmed Ngemera, the Deputy Secretary General in charge of Finance and Administration, hon. Wilbert Kaahwa, the CTC; Mr. Peter Kiguta, the new Director General of Customs and Trade and Mr. James Kuleiye, the Customs and Trade Officer; all those for their technical guidance, and of course, Mr Speaker, not to forget our able and efficient office of the Clerk for their usual excellent facilitation accorded to the Committee – *(Applause)*.

Finally, Mr. Speaker, the Committee has proposed a number of recommendations in this report. To put these recommendations into effect, it will be necessary to move amendments to the Bill. Other amendments are also suggested which are not of a policy and technical nature, but which seek to make those particular provisions clearer.

The proposed amendments are attached to this report as “Annex”. At the appropriate stage in the course of passage of this Bill, I intend, on behalf of the Committee, to move those amendments.

Mr. Speaker, sir, this Bill is quite technical and we were told it took a quite a while for some provisions to be agreed upon. We are now beginning the actual stage of integration. Mr Speaker, sir, taking into account these recommendations and any other that may be moved on the floor, I commend this Bill to the House. Mr. Speaker, Sir, I beg to move – *(Applause)*.

The Speaker: Honourable members, the motion is now open for debate.

Mr. Yonasani. Kanyomozi (Uganda): Mr. Speaker, sir, let me first say how

grateful we are to the Minister and Chairman of Council for having brought this battle of getting the first stage of integration to the fore. Mr. Minister, when we came the first time as an Assembly, you were the minister in charge of the Council, so you have been a winner again, being the first one to bring a wholesome Bill to this Assembly, and I thank you – *(Applause)*.

There are issues in this Bill which the Chairman of the committee touched on, but there are some issues which I think we need also to elaborate a little bit. First is the issue of the directorate which has already been established, and which has been provided for in the Bill.

In our wisdom we thought that since it has already been done there was no need for it. It does not mean however that we minimize the role and the scope of that directorate. I am sure it should be able to do many things. And if you look at the study that accompanied the work and that had been proposed in 1997, it was provided for that this directorate would be a big structure which would help the Community to move on, not only in issues of customs but also in issues of Trade and also issues of fiscal policy regarding the future integration of this region. We would like to see in the immediate future that this is followed to the letter, and structures and organizations relating to these institutions are well laid out, more so when we are fast tracking the East African federation.

The second aspect which we would like to touch regards the question of customs administration. Section 5 of the Bill provides for the Directors of Customs in the Partner States. Their allegiance, Mr

Speaker, is to the Partner States. They are also looking at the possibility of having Directors General or Commissioners General in their Partner States! They will be working for the Partner States, and in essence, Mr Speaker, I would say, in this Bill as it is there is nothing East African about it! *(Applause)* It is a collection of issues and proposals which do not make the intension of this region paramount. And making these commissioners to be appointed by their respective states will not bring the integration process nearer.

I would therefore suggest that while we agree that it is in the initial stage necessary not to have people here in charge of Customs but leave them in the Partners States, there were issues we could have considered. The core commissioners now present would have been seconded to the East African Community and still done the job! And it is not impossible to do that – *(Applause)* - it had been done before and there is history to support it!

The East African Community as we knew it in the past - those of us who were already there knew that the customs collection in this region was done centrally and it worked! It was later of course to have problems that befell us, but it does not mean that we cannot correct those problems and move on, especially when we have had indication from the Summit and from the Heads of State that that is the direction that we are going to go.

I am saying, Mr. Speaker, these people will be expected to serve two masters and end up being ineffective in a way. And the reporting is going to be made difficult. Mr Speaker, I am urging the

Minister and the Secretary General to start looking very very carefully as to how we can bring these people to realize that they belong here at the centre rather than belonging to the periphery.

Mr. Speaker there is another issue, which I would like to touch on. While we recognize subsidiarity and asymmetry, there is the issue regarding the distribution of revenue. Without being parochial, I am looking at the landlocked country which I happen to represent in this Assembly. If the goods come in at 25%, and the collection of that revenue is at the point of entry, say Mombasa, the person gets in with the goods, puts them in a warehouse in another Partner State, say Tanzania, even if he is a Kenyan, and at a later stage he realizes that these goods would fetch a better price in Uganda and decides to ship them. Who is the beneficiary of the customs collected at the point of entry; is it Uganda, Kenya or Tanzania? These issues need to be looked at, and I hope, Mr Speaker somebody is looking at them.

Since we are saying that one of the reasons for decentralizing and collecting from the Partner States is so that the revenue realized is kept by the member state this idea goes completely against the proposal that we are trying to promote. That is why some of us think, Mr Speaker that the centralized collection with the redistribution afterwards according to the needs and the effect of trade would have been a better proposal for this Community and the region to work.

Mr Speaker lets look at the percentages. Mr Speaker, I am not advising the minister to tell some of his colleagues, I

saw something in the newspapers recently where a person was so concerned that if we have percentages of collection of revenue remitted to the Community then the country will not be in position to do it. And I said, “Do these people at times read or they do not read?”. The equal contribution at the moment for that country which I do not want to name is more than what is proposed if they used the formula. I wondered and I said to myself, Mr Speaker, “it is because the ministers maybe are too busy”; but when they happen to be Ministers of Finance, it becomes a very worrying proposition! *(Laughter)* I am saying, Mr Speaker, and I am asking the minister colleague to advise these people to look at the figures first before they make pronouncements in newspapers as it sets bad precedence and gives wrong impression and perception to the population of these countries – *(Applause)*.

Mr Speaker a workable proposition of percentages of revenue would ease the planning process of the region and give the Secretariat and related organs of the Community a better way to plan, to focus, to do things in a manner that is possible. And it won't be new, it has been done before. It has being done else where, ECOWAS does it and they have not reached the stage that we have reached!

Mr. Speaker I would like to touch another issue which is of concern and which was of concern too to the Committee. It regards the trading blocs. As the chairman of our committee said, we have had, not only in four years; we have had actually five years of negotiations. We knew we belonged to these other blocs; we knew also that we

were going to go into a single bloc; we also knew that the WTO Rules by 2008 will demand that we cannot belong to different blocs.

Of course there is justification: people are looking at economic goods and saying since there is preferential treatment in COMESA vis-a-vis the goods to Kenya and Uganda, and some of them are at zero rates, therefore there is no problem! There is still a problem, and our chairman has touched on that problem. There is the problem of shrewd operators in the region and the impact that it will have on our infant industries which we are trying to protect by making these list of goods, Mr Speaker, which you have heard - four hundred and fifty for Uganda, eight hundred and sixty for Tanzania which will be coming from Kenya but with tariffs. These others are going to come in even without that provision and the damage they will do to us will be more pronounced than what the damage would be if they were Kenyan goods! *(Applause)* Mr Speaker, whose interests are we trying to serve? I am sure the Minister having scored 95% will push with his colleagues so that he scores 100%. Let us move and move very quickly and start negotiating with COMESA and SADC as a bloc.

Mr. Speaker, recently we went to Europe and when we were in Brussels we met people concerned with trade and development and they said, “At times we do not understand you Africans. You have an opportunity to move and yet you put a stone in the shoe and you want to run when you have a stone in your shoe. Even if you run one, it pinches; two you won't run at the speed you would otherwise have run”! Why do we provide stones in our shoes when we can

run faster, and in development terms - if I remember a quotation from the wise man of this region called Mwalimu who said “where others are walking we need to run!” and we cannot run when we have stones in our shoes and the stones are there and we need to remove them!
(*Applause and interruptions*)

Mr. Speaker, I am sure the minister is going to work on this issue. We appreciate his leadership and we are looking more even to the leadership that he will provide as the Chairman of Council and in other spheres, so please remove these stones and we move on –
(*Interjections*).

Mr. Ochieng Mbeo: Mr. Speaker you heard hon. Kanyomozi sounding the Chairman of the Council on other spheres that he is going to be excelling in. You heard. Could he justify that? We know he is the Chairman of the Council; maybe something else is happening here. Could we know? Could he justify? Is he in order to confuse the House?
(*Laughter*)

The Speaker: I think he is in order. What he is referring to is that the Minister is the Chairman of the Council of Ministers but he has also other extraordinary duties. Hon. Kanyomozi you may continue.

Mr Kanyomozi: Thank you Mr. Speaker, for the wise ruling as usual. The Minister has not only this Customs thing we are talking about, he is the Chairman of the Council of Ministers, and under that ambit so many things happen. In addition, as you know he is the Minister responsible for foreign Affairs in Tanzania – (*interjection*) –

Thank you. And those are the issues I am talking about.

Mr Speaker, we need to move and move very fast. We need to move very fast because of survival. The trade environment out there is hostile and it is going to be the survival of the fittest. We need to equip ourselves in a manner that we can struggle with the forces outside there. We need at look at our selves as a unit and move in order to make this region very important in the committee of nations. Mr. Speaker I support the motion – (*Applause*).

Mr. Mabere Marando (Tanzania): *Mheshimiwa* Speaker, I wish first to thank the Chairman of the Council of Ministers on his very eloquent motion moved in the morning, and I also wish to recognize the very excellent presentation by the Chairman of the Committee on the Bill that is before the House.

Mr Speaker, today the people of East Africa, through Members of this Assembly, are jubilant. They feel jubilant because this is the entry point to the integration process as enunciated in the Treaty. They feel jubilant because this is the first step in the door that will lead them to the House which we all dream of; that is the federation of East Africa. This Act has taken our officials and experts about four to five years to bring to the shape it is in now. It is ironic, Hon Speaker sir, that it took the committee only seven days to pinpoint a few short-comings that ought to have been detected earlier! But then, that is our job as legislators, and we are not blaming the experts; they are not legislators.

Mr. Speaker, sir, I wish to make a few comments on the Bill. My good friend who was just on the floor remarked on the concept of trade. This is found in sections 3 and 4 of the Bill. I wish to make a few comments on that. I stand here to plead to the Chairman of the Council that he should move along with the Committee in agreeing to the removal of sections 3 and 4.

When we were in consultation with the Deputy Secretary General, Finance and Administration, we made it clear to them that in the whole format of the Bill, only sections 3 and 4 refer to trade, and there is nothing else apart from sections 3 and 4 that would bring into play the concept of trade and yet section 4 somewhere refers to the Director General of Customs and Trade being responsible for negotiations, for dispute settlements and so on, and yet there is nothing else in the body of the whole Bill that would enable him to do that. That makes that Directorate of Trade completely irrelevant in the Act – *(Applause)*. Therefore we are asking the Chairman of the Council Ministers and the Council itself not to hesitate, even before us, even before the Chairman of the Committee not to feel shy with their own amendments to remove sections 3 and 4 of the Bill – *(Applause)*. Hon Speaker sir, it would just be nothing but genteel; nothing but to show concern and seriousness in their approach to the Bill.

Mr. Speaker, sir, when we were discussing it formally we used such words as “the sections being sneaked in” I cannot use that here now – *(Laughter)*. Yes! Some people even said “being smuggled in”, I do not want to say that here now – *(Interjections and Laughter)*.

But you know, those sections relating to trade are completely irrelevant.

Hon. Speaker, sir, you will recall, in your House there is a Bill relating to trade negotiations. In your House the Council of Ministers have expressed the intention of taking over that Bill, and this House has said it has no objection to that proposal and we are very anxiously waiting for them to come up with concrete propositions on how to usefully and practically bring the people of East Africa to negotiate as a team with other countries. All these matters that were intended to be handled by the Director of Trade etcetera should be added into that Bill should the Council of Ministers so wish. But as it is now, I humbly urge the Chairperson and his colleagues to agree with the Committee that those two sections should not be there.

I am glad to have heard the Chairman of the Council of Ministers mention this morning that Section 248 in the Bill constitutes an ambiguity because it directly contradicts the spirit of Article 8 of the Treaty itself. That is to say that whenever this House passes an Act, then it should take precedence over national legislations as and when there are contradictions. And Section 248 of the Bill runs completely contradictory to that spirit. Having mentioned it in passing, I am sure the Chairman of the Council of Ministers will come up in total agreement with the Committee on this matter.

Hon. Speaker, sir, another thing I would like to comment on is the whole spirit of the Bill; the apparent and clear jealousy on the concept of sovereignty. For the past three, four five years, the officers and technical people –

technical men and women - seem to have continuously felt very jealous of the national interest thereby failing to promote the concept of “East Africaness” in the Bill – (*Applause*).

When we were in Nanyuki One, a certain expert told us that in fact it is not surrender of sovereignty that is happening in the process of integration. No state is surrendering its sovereignty, what we are doing is pooling together our sovereignty and coming up stronger as a super power – (*Hear, Hear*)

Hon. Speaker, sir, that phrase really impressed me; it was new to me. It stuck in my mind as my good friend says there. I had always believed in the legal concept of surrender of sovereignty, now I was being educated that this is a pooling together of sovereignties: the sovereignty of Tanzania, the sovereignty of Kenya and the sovereignty of Uganda being pooled together and thereby coming out with a huge powerful sovereign State of East Africa. So, there is nothing to fear; there is nothing to be scared about, all of us – there is nowadays an NGO term called a “win-win situation”. We are all coming out as winners, Mr Speaker, sir.

So, we in the Committee under the very wise chairmanship of hon. Nangale - able and wise chairmanship, we thought we should not delve into this jealousy and thereby tearing down every section to put in the “East Africaness”, we thought we should leave it to the wisdom of the Council of Ministers, within a very short time to rethink now that the task force, the Fast Track team has come up with a proposition that we should be one between 2010 and 2013.

These provisions were negotiated before the report of the eminent persons on the fast tracking of the community. Now that it is there, and having read through it, I really found that there is very little dichotomy between the report and the spirit that flows in through the whole of this Bill. Maybe the honourable Council of Ministers may think again on making this Bill more East African, if not now, before we pass it tomorrow because the day after tomorrow as of necessity will be, then within a very short time to put in more East Africaness.

That is to say, the complete disregard of a centralised collection and postponing the negotiation of that process to some unknown distant date; this should be reviewed in view of the Fast Track team report. Maybe the Council of Ministers can give marching orders to that thing called “High Level Technical something” – (*Laughter*) - to bring in more East Africaness, not only in this, but in the next negotiated bills that are due to be brought to this house.

Mr. Speaker, sir, as I said before - or did not say - I wanted to have said at the beginning that I would be very brief because this is an important step in the process of integration and I have nothing else to add but to completely support the Bill as it is hoping that the Council will take over the amendments and move them itself instead of waiting for the Committee. *Asante sana Bwana Speaker.*

Mr. Med Kagwa (Uganda): Thank you Mr. Speaker, sir, I will be very brief. First of all I want to join the members who have held the Floor earlier to thank the Minister for bringing this Bill and the Committee for such good work.

However, when I look at the report, on page 3 the Committee notes that: “In order to save the credibility of the East African Community, the Committee accepted to work within the limited frames.”

Mr. Speaker, this sentence is loaded. It beats my understanding to see that – as the member who has been holding the floor alluded to - it took between four and five years for the powers that be to come up with this Bill, but they expected the Committee of this House to deal with it within a week! Mr Speaker, I just want to express my personal feelings for the record that my interpretation of that situation is that this Assembly is taken for granted and that whenever a Bill will be brought, it will certainly be passed. Mr Speaker, I think this is very unfortunate. Those who have been in Parliaments before know very well that when a Bill is sent to a Committee, it is not only the Committee that deals with that Bill. It also has the option of inviting persons it thinks will help in making that Bill the best that can come out of a Bill. This was denied to this Committee. I know that they would have loved to call some people but they did not because of the time factor. Then it takes me to the Treaty; is this people centred; is it private sector driven?

Mr. Speaker, I want to urge the Council of Ministers and any other persons who have the power to bring these Bills to discard this idea of “the states have discussed”. We are not here to rubber stamp! (*Applause*) It will serve no purpose for me to sit in this Assembly if I cannot amend and I purport to be speaking for the people of East Africa, Mr Speaker! It is known that the executive brings the Bills, the legislature

will not just rubberstamp it! It must amend it where it is necessary. This is why we sit here! Otherwise, if the powers that be were not ready to have this August House, they may as well not have created it and made decrees to run the East African Community! (*Applause*)

Mr. Speaker, sir, I hope that in future ample time will be given to the relevant Committees of this House to deal with such important matters as is befitting. Otherwise, it will be an embarrassment to the House, and indeed to the Council to pass a law here and in the next few months it is brought to the test in the East African Court of Justice.

Mr. Speaker, sir, when I read this Bill, I looked at the sentencing and I do not think there is any possible argument to sustain what is written here. I do not think natural justice would support that. You write a sentence, you say somebody will either pay a fine of US\$ 1,500 or three years imprisonment. In another clause you say the fine will be US\$ 500 or three years. This is inconsistent! It is known in jurisprudence that similar magnitude of cases carry similar sentences. What is the justification in one place to pay a fine of US\$ 500 or three years and in another US\$ 2500 or three years? I think there cannot be any justification for this discrimination in sentencing.

Mr. Speaker, when again you look at the Bill, I find that it has some problems in some provisions; there are provisions that tend to discriminate! You find, for instance in some provision in the Bill, the private people, the business people are denied some rights while they are extended to government and the diplomatic corps, and I say, who is this

Bill supposed to serve? At the appropriate time, I will raise these issues and see if they will meet the kind consideration of the Chairman Council of Ministers, to see how this can be amended.

I will now turn to the report, Mr. Speaker. The Committee has proposed that the operationalisation of the Protocol has already been set as January 2005, and that the commencement date be 1st January. I think we are treading in areas where we are not very competent. I think this is the function of the executive, and I will accordingly recommend that we leave the provision as it is drafted in the Bill, because we may fix the date and we are unable to meet that target. It is one thing to wish that the Council will implement this but experience has shown us here that many things, including the Development Strategy Plan has not lived its matrix. So, I would not want to see a date fixed and then we cannot conform to it.

Mr. Speaker, the other issue arises on page 6, and I am happy the Committee has pointed this out. I am just wondering again, Mr Speaker, why the organ of the East African Court of Justice was created when we are not prepared to give it work! My understanding was that when we finish the law regarding Customs Management the Court would be in business, but the way the Bill is written, it appears that they will continue sitting here doing nothing. I think we have to give work to the Court. And at any rate, as rightly pointed out here, the Treaty gives the Court powers to interpret the Treaty and since the Customs Union Protocol and the Bill we are now considering arise out of that, I think it would be unfair to deny the

Court the work that is mandated by treaty.

Mr. Speaker, another issue arises on page 8 and it has been alluded to by the member who held the floor before I came on, it is the issue of bringing the trade matters here and just appearing in clauses 3 and 4. To me, I think they are not only hanging but as the previous member said, I will just say it is unfortunate, and I think we should not feel shy about deleting them there because as he correctly pointed out, there is already a Bill that Council accepted to take on, and it specifically deals with trade matters.

The other issue, Mr Speaker, relates to the linkage between the Director General of Customs and the Commissioners of Customs in the respective Partner States. Mr Speaker, if you did not appoint me how would I have allegiance to you? You cannot disappoint me why should I care about you? I think we need to look at this provision again. And I note also I think in the Bill somewhere it is says that "they may exchange information". It is discretionary! They are not obligated to that. And that is consistent with the way it is structured because there is no direct linkage. So Mr Speaker, I think the Chairman Council may have to reflect on that.

Mr. Speaker, again on page 11 I note that the Committee has pointed out this issue that the Community shall be financed by equal contributions. I just want to make one simple statement that this is not consistent with fast tracking. I think in view of the fact that the key words now are "fast tracking", this matter should be considered seriously,

actually in light of what the Committee has recommended.

Finally, Mr Speaker, I need some clarification here. Can we talk of rules of origin where the East African Community countries are still within two blocs? I thank you – (*Applause*).

The Speaker: Any honourable member wishing to debate? I hope you are not all waiting for tomorrow and the day after - (*Interruptions*). Now that you are not ready to debate, I will be very meant tomorrow and the day after – (*Laughter*). Hon. Mwatela?

Mr. Calist Mwatela (Kenya): Thank you Mr. Speaker. I do not want you to be mean to the rest of the members so I decided to speak.

Mr Speaker, first may I thank the hon. Minister – as has been alluded to before – for making this mark. East Africans have been waiting for this moment for a long, long time, and as legislators - I think I am talk on behalf of everybody - people have kept asking us what is happening; why we can not operate as one. Secondly, I would like to thank the Chair and the rest of the members of the Committee on Communications, Trade and Investments for a very good piece of work. I think they had an uphill task, one week for a job that took five years for other people I think that was a marvellous job – (*Applause*). And indeed the report is very, very good; I must say it is excellent considering the time they had.

Mr. Speaker, before I talk about the contents of what we have today, I would like to say something about the work of the Assembly and the Council of

Ministers. I think all of us know that it is the duty of the Secretariat to prepare adequately for work that is going to be presented to this House by the Council of Ministers. I mentioned this sometime back when we had questions here in the last sitting that we had, and I was expressing disappointment at how the whole thing was handled.

Today we were informed somehow that there was some documentation missing, and that is why we had to adjourn in the morning. I think this matter and that situation rest squarely on the Secretariat! They should prepare: The Secretariat has to take its time and do the work! Unless of course, as hon. Med has indicated, we are just here, for things can be brought here and it does not matter whether they are complete or not, the House will pass! I think this should be the last time that such a thing has happened! (*Applause and Laughter*)(*Interjection*)

Mr. Kaggwa: Mr. Speaker, is the Hon. Member holding the Floor in order to use threatening language in this August House?

The Speaker: I think he is praying that this becomes the last time - (*Laughter*).

Mr. Mwatela: Mr. Speaker, you are always ahead of us, thank you very much - (*Laughter*).

Mr Speaker, the role of Customs as we all know, among other things, includes ensuring that goods coming in comply with what we require; our standards and rules. We require that we do not get in goods that are going to interfere with out environment, or goods that are dangerous to the health of our people or to safety. I think it is generally known

that we use customs also to protect our industries; to protect our agriculture and production as a whole.

Mr. Speaker, the job of Customs administration is big. That by itself would demand that it should not be mixed with trade. Trade has so much! If you take both Customs and Trade and put them under one unit, you will be asking for a lot of trouble. Further more, we know that in a way you would be having a conflict of interest if the same person is to do Customs and also be in charge of Trade, because one is generating that customs you are going to collect because we collect Customs through trade work. So it is a conflict of interest.

Therefore, the suggestion that we have, the Directorate of Customs and Trade in this law, I think, as has been alluded to, we would request that the hon. Minister and indeed all others who are involved in creating this to understand that it can be done in a better way and that they should indeed bring in a separate law to create the Directorate of Trade. Indeed, we need to know what powers that Director will have – (*Interjection*).

Mr. Kanyomozi: Mr. Speaker, I would like to inform my colleague on the Floor that even in the Partner States the issues of customs are handled by the Ministries of Finance, and the issues of trade are handled by the Ministries of Trade, Commerce and related Industries. So it would be ideal, even for co-ordination, that this is looked at and we commend it to the Minister responsible for the Council.

Mr. Mwatela: I can only be grateful, hon. Speaker, to the Member for giving

that information and only say that we hope the Minister will not take this – we support him in many other issues, but we hope that in this particular area, he will understand us when we say that we separate the two. I was just asking that indeed we need a separate Act to create that Directorate of Customs. We need to know what powers - even today, when you go back to the Partner States, the Commissioner of Customs, there is an Act which stipulates and says exactly what powers he enjoys, what he can do and what he cannot do. Where are those in this one? They are not there! It is like is just perched there! You read through the whole Bill and there is no mention of what he does and what he does not do – (*Interjection*) – or she. It will always be either he or she – (*Laughter*).

So, Mr. Speaker, I would like to mention one thing: First of all the Minister on page 3 of his statement clearly states that that the Protocol will become operational on 1 January 2005. Without appearing to be challenging hon. Med Kaggwa I think the Minister has said it already himself, so we want it written. I think it is good; in any case we have had so many floated but at least will have a point when we can come back and ask “why was it not done as written? So I really support the idea that we give a deadline.

I would also want to say there are a few areas that probably as we come along we will look at and decide, like the question of inspecting – I was reading through somewhere where a female person cannot be searched by a male, but there is no mention where a male person can be searched by a female person – (*Laughter*). So I think we need to be

fairly clear. Mr. Speaker, with those very few remarks, I support the Motion.

Mr. Mohammed Zubedi (Kenya): Mr. Speaker, first of all I would like to take this opportunity to thank the Chairman of the Council, hon. Kikwete for presenting his very eloquent remarks this morning and hopefully by the end of this Session, with the proposed amendments, we shall sail this Bill through. Mr Speaker, sir, what I want to contribute is not part of the amendments, but it is part of what we discussed as a Committee and we tried to get explanations and assistance from the staff who gave us a lot of help but in some instances I think we all agreed that more work has to be done and we have not yet reached where we hope to reach.

Mr. Speaker, the point I wanted to make is that once we form a Customs Union, we understand that that area, that Customs Union, becomes literally or technically one country, one area as far as Customs is concerned and as far as free trade is concerned. We also understand that perfect Customs Unions have taken time to evolve to what they are, and we are not trying to downplay that and we hope we shall also evolve into a perfect Customs Union, but Mr Speaker if we do not highlight these issues now, and we start working on them, this transitional period that we have of five years, knowing ourselves in Africa, transitions most of the time become permanent – (*Applause*) So we would appeal to the Chairman of the Council, and through him to his colleagues and the Summit that this transitional period of five years we should try to even shorten it to less than five years, rather than thinking of moving on to another five and another

five years before we become a fully fledged Customs Union.

Mr. Speaker, apart from being a Member of this August House, I also happen to be a businessman - (*interruption*). When we talk of business, we tell our colleagues, Mr Speaker, that once we have a customs union, business people, traders small and big will have the opportunity of accessing a market of about 100 million people. As a businessman, Mr Speaker, if one imports goods to one partner state within the Customs Union, one has to pay 25 per cent Common External Tariff. But that should not limit any trader, Mr Speaker that he or she should sell and dispose of those goods in that particular Partner State where he or she has imported those goods. I will give a practical example here.

If I import goods into Kenya, I pay my 25 per cent duty in Kilindini, Mombasa, the goods come in. My intention genuinely is to sell those goods in Kenya. But I know that I have imported goods into Kenya and into a Customs Union called East Africa. I sell part of my goods in Kenya, and then I find out that I have a very good market in Tanzania or Uganda; and a better price and better profits, I want to take part of those goods to Uganda or Tanzania. As a perfect Customs Union, I should be able to do that freely without having to be subjected to double taxation! (*Applause*)

But in our case here, this Bill here is silent on that, but when we consulted the experts, they said no, it is silent but the experts have agreed that the status quo, the present situation should continue, meaning that if those goods are to be re-exported - and the word “re-export” is

being used, Mr Speaker, here – re-export to Uganda or Tanzania, the trader will have to pay 25 per cent Common External Tariff and then claim that duty back himself from the Government of Kenya or Tanzania, wherever the point of entry is! What I am saying is, if a customs union, Mr Speaker, is to benefit traders to access this market of 100 million, and these traders are now subjected to double taxation, is there really any benefit that we are getting out of this Customs Union? (*Members: No, No!*) (*Applause*)

Mr Speaker, we know that these negotiations have been very long and that they have been very heated because there are some countries, as my colleague said, which are landlocked and they might suffer because many people will import goods into Kenya or Tanzania and then re-export them to Uganda! What I am saying is, a mechanism must be put in place whereby those goods when they enter Uganda or Tanzania, those countries should not be deprived of that duty of those particular goods that come in, but the mechanism should be that there should be a system where the government officers – and nowadays, Mr Speaker, we are so advanced as far as Information Technology and computerisation is concerned - the government concerned should work out their own paper work and that money is transferred within the states themselves instead of subjecting the traders to do that for them – (*Applause*).

So, Mr. Speaker, this is not an amendment in this Bill, but this is an appeal to the Chairman of Council that this matter must be taken up very, very urgently. Mr Speaker I have a document

that I have just accessed from the internet, that is from “*EU Business*”. It says here:

“The Customs Union is a single trading area where all goods circulate freely whether made within the EU or imported from outside. A Swedish car can be dispatched to Hungary without paying any duty and without any customs control. A Japanese car importer pays duty when the car first enters the European Union but after that, there is nothing more to pay and there are no more checks.” (*Applause*)

Mr. Speaker, this is the customs union, this is the market of 100 million people that the people of East Africa are yearning for. I am not saying that it is possible to give it to them today, but I am saying that five years down the line or even less if we can, and if we work very hard we can, let us avail that opportunity to our people so that they can benefit and understand the fruits of this Customs Union. Mr Speaker, with those few remarks I beg to support, thank you.

Ms. Rose Waruhiu (Kenya): Thank you Mr. Speaker, for giving me this opportunity. I think I have endured rather long looks from my colleagues who know that as a Member of the Trade Committee, there is a kind of custom in this House that we should speak earlier to enable our colleagues to take on. I will explain:

It has been a very difficult ten days since we embarked on working on this Bill, and I think it is important that we recognise the circumstances under which

we have worked and in doing so, I would like to join my colleagues in thanking the Minister not only for taking up the responsibility as Chairman of the Council of Ministers but also for his efforts to consult with the Assembly earlier to see how the Assembly itself could ensure that the plan to have the Customs Union Bill debated and possibly in operation before January occurs. I also want to thank the Members of the Committee, my colleagues with whom I have worked and the Chairman, hon. Nangale for the way he has moved our report today.

But I do want us to recognise that the difficulties under which we have worked should not have taken the Council or the Secretariat by surprise. These are issues we have spoken about in the last three years. In other words, I cannot say we feel vindicated but we do feel that it has taken the debate of a very major Bill for us to begin to work together a little bit more closely. We hope that this is a tendency or an approach to our work which we will adopt. I am saying this, Mr Speaker because much as the House has had very little time to go through the Bill or even the Committee, we should commend the House, because since the House was inaugurated, the House took it upon itself, having read the Treaty, to keep looking for something called the Customs Union. If it was not for that preparation and that keenness to get to grips with what was going on, I think we would have had even greater difficulty to persuade the House that this was something we could do in the short time we had.

I think Members will recall that we have taken many days away from this House or even from Arusha and looked and

solicited for assistance so we could sit with consultants and experts from all the Partner States: we sat in Jinja; we sat in Mombasa, we have sat here; we have sat in the Mara, and I think this work should be recognised. At that time we were doing so in anticipation of the Customs Union. When we came here, all of us knew that the Customs Union was going to be – or is - the entry point to the integration. So I would like to record the efforts and the work done by the House over the last three years in preparation, and to say that this preparation, we expect in future to be recognised and to be part of our working programme. I do not think that it has made very great sense that we have to go out and look to donors to assist us to do our own work. But this Bill was said to be almost ready – No, first the Protocol; let me first talk about the Protocol.

The House will recall, we had a very painful experience exactly a year ago. We arrived in Arusha for the signing of the Protocol. I do not know why members want to forget this history. You will recall we sat here by ourselves I think for quite a few days before we had anybody offering to come and explain to us the delay and we took that, and in good faith. Somebody did come and tell us “Oh, the signing is not on.” In January we were touring Tanzania when again we were told “the signing is not on.” In March, it was on and we were here, fortunately.

When we were here for the signing, I recall at the House we understood that the Customs Union would come into effect on the 1st of July. So again we organised our working session in May that we would debate the Bill. Again, we would be here for three days before we

know again that it is not on our timetable. But we do not, at any of these meetings, get proper information.

When we set our working timetable now for the new year, we acted on information we had received in June via statements of our Finance Ministers – I can recall I was sitting in the gallery in the Parliament of Kenya, and it is from there I understood from the Minister's Speech that the Customs Union would come into effect on 1st of September. So, when we were down working on our programme at Nanyuki, we said we must sit in September; we must sit soon to debate this Bill. So, we were here in September again to find the Bill was not ready. Now, one may ask; why do we want to repeat this history. I think it is important because while we have accepted to move the way we have moved, it is very important for both the dignity of this House and its members, but we insist that in future we be given time to do our work properly - (*Applause*). I have taken long to give that history only for that purpose.

Secondly, Mr. Speaker, last week when we sat in our Committee, we foresaw quite a few difficulties as have been alluded to by our Members. The information that we did not get but so far I understand was the case is that the background work on this Bill is still going on. In fact it was going on last week when we were here, and I understand it is going on now when we are here. And I made a very humble request to the officers who came to speak to us, and I said well, it is good we are here and we are raising this question, because you have a backup of people who are actually concerned who are

currently here, who can come and explain to us what is going on.

In the first place, Mr Speaker, if we pass the Customs Management Bill, we will, as Members of this Assembly become owners of all that is contained herein. And what is contained herein has no connection, as my colleagues have said! It does not belong to us! If you talk to businessmen, and fortunately the businessmen in our Committee declared their interests and you can tell by their participation that we had practical examples of the kind of things that this Bill should be providing. So we ask the question: what is East African in this Bill? Anyway I would hope that the Minister can allude to the vision.

Even if there is transition, why is it that after all this work only one Bill then has been negotiated? What are these underlying difficulties? When we speak, we allude to them, we assume that they have something to do with sovereignty; we assume they have something to do with the interests of people who come to Arusha for negotiations, and with the Bill as it is, will continue to come to Arusha – (*Applause*). There is nothing wrong with them coming to Arusha, but if they come to Arusha can we also get to have an idea what are they negotiating; on which levels are we moving and which areas are we not moving?

It is traditional, Mr Speaker, that the Executive must always keep information from politicians, but this game cannot work in the task we are involved in. I have always found that any time you want information, the question you ask is answered. So it means you have to be very clever to know the question to ask.

If you ask the wrong question, because you do not have the facts, then you will never know what is going on. But I do not feel that this House feels that it owns this Bill.

Even if we had a structure, whatever we called it, the Bill jumps immediately to what will go on in Partner States. From Article 5 it creates the Commissioner, or assumes there will be a Commissioner of Customs in every state, continues for over 250 sections to describe how that Commissioner will work. As hon. Med said, I think it is in paragraph 11; that is where it says these three Commissioners may exchange information. You may correct me on the Article but it is one article where there is no mention of how the three ever work together! They may exchange information!

Now if you are familiar with the structure of the Customs offices in the Partner States - at least I am familiar with Kenya - the Commissioner reports to somebody called Commissioner General and the Commissioner General is an officer who is responsible to the Minister for Finance. So, even if we had an acceptable structure to deal with Customs alone, it is only fair. And I think this is why I am supporting our recommendation.

We gave the Secretariat the last one week to at least come back with some more help for the Committee, we have received none! So, it is in our own interest - we are the owners of the Community that has to take care about the building of the capacity that is required at the headquarters, and we start with a Bill, Mr Speaker, which the say is a negotiated Bill, based on special interests and it is based on sovereignty.

So, we are passing - or we are being asked to pass the entry point of a key pin to the Community, by a Bill which, we were already being told is negotiated, is not East African and is transitional. But even in that transition, we are not relying on people whose commitment to East Africa is necessary. I am sure that the Minister in responding will answer some of these questions.

Now, Mr. Speaker, I must say that when I think of the East African Community - and I am sure my colleagues have thought many times about their role since they came here three years ago, I think of the Community as a body because in the Treaty, in a paragraph I shall mention later, alludes to the organs. So I was thinking: organs must belong to some body - (*Laughter*). Mr Speaker, it is Article 9. Article 9 establishes the organs and institutions of the Community. So, the body must be the Community - (*Laughter*). Organs matter, you know: your hands are different from your heart, and the brains - (*Interjections*)

The Speaker: Order, honourable Members; I will have to call the names of those trying to destabilise the House.

Ms Waruhiu: Mr Speaker what I am saying is that one organ of the Community was requested to work quickly to ensure that this Bill is passed in the last two weeks. And I can tell you truthfully, Mr Speaker, when I left my home I assumed that the other organs were also working! It never occurred to me that the matter had been committed to this Assembly so that others can go to sleep - (*Laughter*).

So I am really asking, Mr Speaker, the Minister must tell us: what is urgent in this Bill? I was convinced two weeks ago that it was urgent, and that is why we moved in this House to get the House to come back and deal with an urgent matter! But as we speak now, I don't want to raise alarm because we did agree to suspend our own rules, we shall go home having passed a document which we do not have! Even if we were so obliging in the beginning, I think it is a very serious matter – (*Applause*) - in any Parliament today! We actually do not have a Bill! So Members must realise that not only did we change our Rules of Procedure, we have gone on now – well fortunately it is only our Rules, I have not found that we are breaking the law, but the consequences of this agreement to compromise our Rules can have very serious consequences. It did not matter, I think, Mr Speaker that we – (*Interjection*) -

Mr. Jared Kangwana: Mr. Speaker, sir, I stand to highlight the point the speaker who is holding the Floor has alluded to concerning suspension of rules. To the best of my knowledge, Mr Speaker, sir, the suspension of the rules related only to the publication of the Bill in the gazette. But, Mr Speaker sir, we did not suspend the rule requiring that the Bill be printed – (*Applause*). And that is mandatory, Mr Speaker sir. Even I do not have my copy; maybe my colleagues have copies at the moment.

The Speaker: Hon. Waruhiu you may continue.

Ms. Waruhiu: Thank you for that information, I think the point has been made. I would plead with my colleagues that should they leave Arusha without

having seen a Bill, then they go home, we would have to take a very extraordinary decision to accept what it is that we have passed. I would even ask that as a point of urgency we are informed what has happened to the printing of the Bill – (*Applause*). I think this is to me a very serious issue! Now, supposing something happens, you know the way deadlines are?

Mr Speaker, a colleague alluded to failure to meet deadlines and if the printing machines or printers go on Christmas holiday and we do not have Bill, the House may decide to come back! But what I am saying is that the sense of urgency that we expected to see from the other organs of the Community has not been provided. Now, whether this is an oversight, I would certainly hope that before we get to finishing this debate or completing this debate, we should have an indication on whether we shall have a Bill in the House. I think this is unprecedented and I really do not see that we have an answer.

Now coming to our report itself, Mr. Speaker, first of all I think I have made the point of the long History that this House has had in preparing for this Bill, and I commend Members and I think that that background preparation has enabled both the Committee and the House to move as quickly as possible. But one would have thought, even before I go to our own report, that we would have, in the objects of the Bill in the Minister's introduction of the Bill for the Second Reading is really to bring the House up to date on how much has been done on the harmonisation of policies. In other words, are we to take it for granted that because the Bill now provides for how this work will be done in the three Partner States, all obstacles or

impediments in the harmonisation of policies have been done?

It looks like the law floats alone in some arena, then there are other groups somewhere working on the regulations, then there is work that goes on in the Partner States. And, really I appeal that this House be taken seriously. One would like to feel, as a responsible legislator, that one understands the consequence of what one has approved or what one has passed, even if one has not been of the negotiation. So, there is a complete blank here.

May I suggest that the working relationships in future, the decisions that the Secretariat make - or the Council - in consulting the Assembly or at what stage to consult the Assembly, these are decisions that we need to look at again.

When I met the people who came from the capitals during the conclusion of the last meeting of the Council of Ministers, the officers who come from the capitals to discuss matters of the Community are the ones who really know more about the Community than us. The question for me is; was that really always the intention that we should sit here and only wait until there is something ready to be brought to us? At what stage do you build capacity? There is no parliament today that does not build its capacity around the work it is supposed to do! *(Applause)*

I do not want to make a lot of comments on the transition, I think my colleagues have done that, but what our Committee has accomplished, which was very ably put forward this morning by our Chairman, is what maybe I can address myself to very briefly. I want to start

with the recommendation on the administration of the Customs, and our major recommendation which is contained on page 6. At the top of page 6 we have said:

“The Customs Management is about policing Customs for revenue while trade encompasses more complex issues including negotiations and exchange of goods and services.”

I think we have emphasised this opinion and so far we have not seen any reason to change this position. Previous speakers have alluded to the Bills that are before the House, in which this House sought to work ahead in areas of trade for the purpose of acting together as a bloc in our negotiations. That remains our position.

Mr Speaker, our other recommendation is on page 7 which repeats our recommendation on the deletion of paragraphs 3 and 4. Maybe I could spend a little time on this myself, because in declaring our interests, which we are always required to, I used to be a very serious management consultant, and reading this Bill, my first question was: If I read paragraphs 3 and 4 and move to 5, I just see a complete disconnect. This has been our main finding. That does not mean that we do not appreciate that you may need another organ – *(Laughter)* - or another institution to deal with Customs and Trade. You will need even others in future.

The Speaker: Order, hon. Members! I do not know what is tickling you! According to Article 1 of the Treaty, “Organs of the Community” means the organs of the Community established by

Article 9 of the Treaty. So, what is the problem?

(The House rose at 6.05 p.m. and adjourned until 9.00 a.m. on Wednesday, 15 December 2004)

Ms Waruhiu: Mr. Speaker, on a very serious note, I am saying that the function of Customs and Trade as foreseen both in the common market and the future federation are going to be a very critical office. At the moment we do not see the capacity at all provided for in this Bill. But in the future, we anticipate that you will need to vest responsibilities and authority to deal with Customs and Trade. And that is why on page 9, Mr Speaker, we have made recommendations to that effect. These recommendations are stating that the Commissioners of Customs in the Partner States whom we are leaving the responsibility to now were saying we do not have the capacity! Now this work is going to be done in the partner states! But if this work is done in the Partner States, where is the functional reporting – *(Interruption)* -

The Speaker: Hon. Waruhiu, I will ask you to conclude because we have come to the end of time.

Ms Waruhiu: Honourable Speaker, I have not exhausted my points.

The Speaker: If you have not finished then you will continue tomorrow.

ADJOURNMENT

The Speaker: Honourable Members, that brings us to the end of our business today. I adjourn the House until tomorrow at 9.00 o'clock in the morning.