

# PARLIAMENT OF KENYA

## THE NATIONAL ASSEMBLY

### THE HANSARD

Tuesday, 9<sup>th</sup> March 2021

The House met at 7.00 p.m.

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) in the Chair]*

### PRAYERS

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order, Hon. Members. We now have the numbers to transact business and thank you for coming into the House so that we can transact this business. I direct that we start the business of the evening.

### PAPERS LAID

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Leader of the Majority.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to lay the following Papers on the Table of the House, today, Tuesday, 9<sup>th</sup> March 2021, Evening Sitting.

Amendment to the Financial Year 2020/2021 Supplementary Estimates No.1 from the National Treasury.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2019 and the certificates therein:

- (i) The National Sports Fund.
- (ii) The Political Parties Fund.
- (iii) The Centre of Mathematics, Science and Technology Education in Africa.
- (iv) The Kenya Technical Trainers College, the State Department for Vocational and Technical Training.

Hon. Temporary Deputy Speaker, I just want to draw your attention to the fact that the Departmental Committee on Budget and Appropriations has already been looking at the Supplementary Estimates. Some additional amendments, ordinarily, would have been transacted within the Departmental Committee on Budget and Appropriations. However, in the interest of transparency and full disclosure, we opted to have them tabled in the House, so that when they go to the Departmental Committee on Budget and Appropriations, the Chairs of the various departmental committees can liaise with the Chair of the Departmental Committee on Budget and Appropriations and process the matter within the same Committee. It is unlikely that the same would then go back to their individual departmental committees.

Therefore, I just wanted to disclose that fact so that people do not wonder why we are tabling here. It is for abundance of caution and for transparency in terms of that there are additional

amendments and various chairs can then liaise with the Departmental Committee on Budget and Appropriations and see how they will sort it out in the sittings from tomorrow.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well, Hon. Kimunya. Well done. Next Order!

### PROCEDURAL MOTION

#### REDUCTION OF PUBLICATION PERIOD FOR A SPECIFIED BILL

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Chairperson, Departmental Committee on Budget and Appropriations.

**Hon. Kanini Kega** (Kieni, JP): Hon. Temporary Deputy Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the Division of Revenue Bill (National Assembly Bill No. 7 of 2021) from seven days to one day.

I beg to move.

The reason we are doing this without, of course, anticipating the recess that we will proceed to, we would really want to process the Division of Revenue Bill before we proceed for the short recess. Therefore, that is the reason we would want to shorten that period. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Who is seconding?

**Hon. Kanini Kega** (Kieni, JP): I request the Majority Whip to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wangwe.

**Hon. Emanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to second. Thank you.

*(Question proposed)*

**Hon. Members:** Put the Question.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Is it the mood of the House?

*(Question put and agreed to)*

Next Order.

### BILL

#### *First Reading*

#### THE DIVISION OF REVENUE BILL

*(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Next Order.

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## MOTIONS

## ALTERATION OF THE 2021 HOUSE CALENDAR

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 28(4), this House resolves to alter its Calendar (2021- Regular Sessions) by varying the period of the short recess with respect to the first part of the session, so that;

(a) the short recess commences on Friday, 12<sup>th</sup> March 2021 and ends on Monday, 22<sup>nd</sup> March 2021; and,

(b) the House resumes on Tuesday, 23<sup>rd</sup> March 2021 to continue with the First Part of the Session.

Hon. Temporary Deputy Speaker, we discussed this matter in the House Business Committee (HBC) based on the business we anticipate the House to undertake between now and the end of the month. This is mainly on the very important matter of the constitutional amendment that is sponsored by the Building Bridges Initiative (BBI) and which is currently receiving public participation. Our joint Committee of Justice and Legal Affairs in both the Senate and the National Assembly is engaged in that exercise. As a Parliament, we made the decision that the matter should be processed simultaneously in the two Houses. It is important that we then synchronise the tabling and the discussion of that debate in the two Houses.

Currently, the Senate is in recess and comes back on 23<sup>rd</sup> March. We were scheduled to go on recess next week and come back on 5<sup>th</sup> April. So, if we were to follow the two divergent calendars, it would mean that on 23<sup>rd</sup> March, the Senate would be considering the Constitutional (Amendment) Bill, while the National Assembly would not have the opportunity until 5<sup>th</sup> April to consider the same. We do not want to feel that the National Assembly is considering a matter after the Senate. It has to be simultaneous. So, when we discussed the matter, we thought it would be easier we plead with Members to take the recess one week earlier, forego one week which we will know how to compensate with another week at some point as we alter the calendar in future. But we should synchronise that, so that on Tuesday, 23<sup>rd</sup> March within that week, as the debate begins in the Senate, it also begins in this House. It is important so that this House is not seen to be playing second fiddle to the Senate. So, we basically are driven by that need to ensure that the debate can move on simultaneously and the two Houses can finish the matter together. That will mean that our break is shortened a bit and brought forward. Fortunately, looking at the tensions that have come as a result of the by-elections, we also looked at the need for Members to have an earlier break so that we bring down the temperatures as we embark on this new exercise so that we do not continue in such situations. So, we will have an early break and an early come back.

The most important thing is to ensure that we will prioritise what we need to do within the Division of Revenue Bill which we can finish and give to the Senate. When we come back, we process it and finish with it because we will need to finalise that before we can go on to the Printed Estimates.

The most important thing is that it would look very odd and unfair to the Members of the National Assembly to be seen to be debating a matter that is supposed to be simultaneous in both Houses after one House has already concluded. I believe we owe the membership of this House that protection to ensure that our status will never be put to test by being made subservient to another House.

With those few remarks, I beg to move and ask Hon. John Mbadi, the Hon. Leader of the Minority Party to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mbadi?

**Hon. John Mbadi** (Suba South, ODM) seconded.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well, it is good that you are on record.

Order, Hon. Members.

*(Question proposed)*

**Hon. Members:** Put the Question.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Is that the mood of the House?

**Hon. Members:** Yes.

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Next Order.

RATIFICATION OF ECONOMIC PARTNERSHIP AGREEMENT  
BETWEEN KENYA AND UNITED KINGDOM

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Chairperson, Departmental Committee on Trade, Industry and Cooperatives. Is he in the House? Before he moves, I would like to notify Members that we have in the House the Cabinet Secretary, Ministry of Industrialisation, Trade and Enterprise Development, Hon. Betty Maina, together with the Principal Secretary, Hon. Johnson Were. They are at the Speaker's Benches. They will be observing the proceedings with us. You are welcome and enjoy the warmth of the House.

Let us have the Chairperson.

*(Applause)*

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Trade, Industry and Cooperatives including the Addendum to the Report, on its consideration of the Economic Partnership Agreement (EPA) between the Republic of Kenya, a member of the East African Community of the one part and the United Kingdom of Great Britain and Northern Ireland of the other part, laid on the Table of the House on 18<sup>th</sup> February 2021 (including the Addendum laid on the Table of House on 9<sup>th</sup> March 2021) and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Ratification of the Economic Partnership Agreement (EPA) between the Republic of Kenya, a member of the East African Community of the one part and the United Kingdom of Great Britain and Northern Ireland of the other part, and resolves that the Cabinet Secretary for Industrialisation or any other Cabinet Secretary under whom the Kenya-UK EPA is domiciled annually submits to the National Assembly-

- (a) a progress report on the implementation of the Kenya-UK EPA; and,
- (b) an Economic Impact Assessment report outlining the gains, losses and developments arising from the implementation of the Kenya-UK EPA.

Hon. Temporary Deputy Speaker, remember this business was turned down and now we bring it in an amended form pursuant to Standing Order No.48.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chairperson, just move the Motion as it is and then you can say all those other things.

As I had said earlier, we have managed to bring all the amendments and wanted to move this Report in its amended form. There are many reasons why we have arrived at this resolution on this EPA. I want to speak on the importance the Kenya-UK EPA has placed on the agriculture sector as well as many other areas of our economy.

Article 7 of Annex 1 of the Agreement is giving duty free and quota free access to the UK market for Kenyan produced agricultural goods, as is the case with other products except arms. On the other hand, this Agreement under Article 7 of Annex 2D subjects UK agricultural products being exported to Kenya to Customs Duty. This is the big difference. The country stands to gain from this arrangement. In other words, the Agreement excludes agricultural products from liberalisation. We will present the list. In the body of the Report, you will find there is a sensitive list of products that cannot be liberalised and, therefore, will attract levies. It is important to point out that the agricultural products excluded from liberalisation, meat and meat products, dairy products, honey, flowers, vegetables...

**Hon. Peter Kaluma** (Homa Bay Town, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chair, just hold. Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): On a point of order, Hon. Temporary Deputy Speaker. The idea of moving is that the House is made to fully understand. The Chair should go deeper than telling us what will not be liberalised. He should tell us the effect of that. If he uses those terms, we do not understand him. We may oppose because we may not know what he means.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, you are jumping the gun and interrupting the Chair. Allow him to move. Proceed Chair.

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Temporary Deputy Speaker, for protecting me. That was the list and we will also come to the economic impact of this Agreement.

Hon. Kaluma just be a little patient. In recognition of the fact that agriculture is the backbone of our country, an extensive coverage of the sector for purposes of ensuring cooperation leads to agricultural sector development.

Article 57 includes crops and livestock. I wish for a moment to observe that the object of this Agreement is aligned to Kenya's policy and agricultural development as well as food security under Article 58. I want to pick one which is for fast cooperation between the parties with a view to creating wealth and improving the quality of life. Also, assistance with Kenya strategy for agricultural development in the Agreement under discussion is in Articles 60 and 70. I am just sampling some of the key areas for the benefit of the understanding of our Members.

Articles 60 to 70 embrace and advocate for cooperation that contributes towards realisation of the objective above. Among the key areas include the following: Regional integration in Article 60, formulation of enabling policies in Article 62, sustainable agricultural development in Article

63, food and nutrition security in Article 64 and value chain management aimed at strengthening value.

Let us go to the economic impact under the economic benefits. Kenya reaps from the Kenya-UK EPA in the export of agricultural products. There are gains the country has made for the last 43 years under the European Union - African, Caribbean and Pacific (EU-ACP). Trade regime since January 2008 under the East African Community-European Union-Economic Partnership Agreement (EAC-EU-EPA) amounts to Kshs37.6 billion; in 2016, Kshs38.6, in 2017, Kshs40.2 billion and in 2018 Kshs40.1 billion. The balance of trade surplus has been in favour of Kenya raising from Kshs4.1 billion in 2016 to Kshs14.1 billion in 2020. This is one of the rare countries we have a positive balance of trade with between them and us from the time EAC-EPA signed in 2016 to date.

There are concerns that if we open our market to the UK, it will flood this market with intermediate and finished goods. The current Agreement was signed in 2016 and we have not witnessed the kind of fears that are being sold now. The moment this market is liberalized, we will have negative balance of trade. So, as at 2020, the balance of trade was in favour of Kenya at Kshs14.1 billion.

Our main export to the UK includes tea, cut flowers, fruits and vegetables, coffee, edible nuts and herbs such as thyme and coriander. The export potential in the UK for Kenyan products was valued at US\$204 billion; about Kshs20 trillion, in 2019. If Kenya were to target this, it would potentially rise the market share in the UK by 5 per cent. It would translate into export worth Kshs1 trillion, an ambition that Kenya is pursuing over the next first five years under the Integrated National Export Development and Promotion Strategy.

*(Loud consultations)*

Hon. Temporary Deputy Speaker, I need some protection here from Members behind me. They can consult in low tones.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, consultations are allowed, but you must also observe the COVID-19 rules. I know this particular business has attracted quite a bit of interest from Members, but let us also protect ourselves. Hon. Millie Odhiambo, what is out of order?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I request the Chair to sit down. I do not wish to interrupt the Chair in his very able presentation in moving the Motion, but you do realise that this Report was tabled today at 3.00 p.m., but we are still fast. We wanted to catch up and read it except there are no copies. So, we are going to debate by faith and as a fisherwoman that is very dangerous. I think there are provisions relating to fisher people that are of concern to me and of our neighbours who are in the sugar belt. So, is it possible that we get copies so that we can know what we are debating? We do not have copies. I do not know what we are debating really.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Millie, I direct the Clerks' desk to just check if it is possible for Members to be provided with the Report. It is very important for the Members to have the Report as they debate. Meanwhile, Chair, proceed.

**Hon. Ali Adan** (Mandera South, JP): Hon. Temporary Deputy Speaker, I was saying that it is important for us to recognise that Kenya is not the only producer of products being exported to the UK. We are in competition with more efficient countries around the world. The UK sources such products including fresh produce from other countries with whom Kenya is in direct

competition. Therefore, this Agreement is very important for our farmers to get their wares and produce to the UK market duty free, quota free and unlimited access to the UK market. It is, therefore, apparent that the Kenya-UK Economic Partnership Agreement will not only benefit our farmers, but also largely shield our economy from losing the over Kshs40 billion market share in the UK.

In addition to the economic benefits which will result from EPA, this Agreement will also be an engine for realisation of Kenya's industrialisation agenda. This is going to be one of the key aspects that will...

**Hon. (Dr.) Robert Pukose** (Endebess, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hold on Chair. Hon. Pukose, what is out of order?

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Temporary Deputy Speaker. I did not want to interrupt the Mover, but considering that we do not have the moving notes, I will request that when he tells us what Kenya is going to benefit from, he can also tell us what the UK is bringing in. He is just giving one side of the story. Can he give us the other side? We do not have anything we can refer to.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Pukose, I direct that we allow the Mover to finish his business and if you have any issues, then you will contribute. I have been made to understand that the Report has been uploaded on the website. So, Members can access it from their desktops. Let us allow him to perform this very important duty. What he is doing is difficult. It is not very easy. So, let us not interrupt him too much.

**Hon. Ali Adan** (Mandera South, JP): Thank you very much, Hon. Temporary Deputy Speaker. I am guided. I was going through the economic benefits. This was also a request from a Member. Another Member is requesting for the other side, which I am going to come to. So, we can kindly ask them to give us a bit of time and be patient. This is fairly technical and so, just allow us so that we can take Members through one by one.

We were at the point where we were saying that in addition to the economic benefits resulting from this EPA, this Agreement will be the engine for realisation of Kenya's industrial agenda. Article 50(b) of the Kenya-UK EPA affords Kenya the opportunity to protect infant industries. From public participation, a lot of concerns were raised on the fact that our infant industries may suffer. Article 50(b) is very clear on the protection of infant industries that may be producing any of the products that are subject to liberalisation under Annex 2A to Annex 2C that may be posing a threat to an infant industry. We have the protection for a period of 10 years from the date of entry into force of the Agreement. Under Article 50(d), in the event the desired outcome of protection of the infant industry will not have been realised over the possible 15 years from entry into force of the Agreement, further similar protection can be pursued after a break of one year from expiry of the 15<sup>th</sup> year. These are the facts that are contained in the Agreement.

I want to come to the impact of this Agreement on domestic trade in paper and paper products, a concern from one of the stakeholders. May I invite your attention to the matter of likely impact of the Kenya-UK EPA as regards paper and paper products sector in Kenya particularly waste recyclers. Paper and paper products fall into two categories.

1. Paper that EAC had already classified as raw material in the annexes given.
2. Paper which is a finished product and on which duty applies upon entry into the country.

Article 12 of this EPA also says the Kenya-UK EPA provides the opportunity to review and consider the plea by some sectors as highlighted below:

“In order to preserve the prospect of the wider African regional integration process, the parties may decide in the EPA Council to modify the level of Custom Duties stipulated in Annexes 2A, 2B and 2C, which may be applied to a product originating in the UK upon its importation into the EAC partner states. The parties shall ensure that any such modification does not result to an incompatibility of the Agreement with the requirement of Article 14 of GATT 1994.”

Hon. Temporary Deputy Speaker, in conclusion, a lot of the information has already been given. In my view, the signing of the Kenya-UK EPA is the best thing that has happened to Kenya. The Agreement comes at a time when our economy has had a thorough beating from the global pandemic.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Allow the Chair an extra two minutes, so that he can conclude.

**Hon. Ali Adan** (Mandera South, JP): In my view, this is an extraordinary situation that calls for an extraordinary intervention. Therefore, among the raft of measures the Government has put in place to breath some life into our economy is the signing of this EPA. We must laud the Government of Kenya, despite all the challenges they have had in terms of other East African Community members failing to come along to negotiate together as a bloc, they found it fit to move ahead. This was a very necessary step because Kenya is in a different state of development what we call lower-middle income economy unlike Uganda, Tanzania and others in the EAC, who enjoy the privileges of being least developed countries in an arrangement called everything, but arms. They are able to export their goods to the European Union and United Kingdom duty free and quota-free. The only thing I wanted to clear in two minutes was the issue which was raised by many stakeholders; the issue of sanitary and phytosanitary standards.

Other than the concern for health, the sanitary and phytosanitary standards have something to do with maximum residue levels in food and on animal feeds that are exported to foreign countries. Maximum residue level is defined as the highest pesticide residue or limit that is legally tolerated in food and feeds that will find its way to humans. It is an issue of health and we cannot compromise. We have a big problem in Kenya because of the counterfeit pesticides which are flooding the market. Once we tame that and encourage our farmers to adopt the best practices, we will take advantage of this Agreement and our farmers will be very happy.

With those few remarks, I beg to move and ask Hon. Jared to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Jared Okelo.

**Hon. Jared Okelo** (Nyando, ODM): I thank you very much, Hon. Temporary Deputy Speaker. The Mover, who is my Chair of the Committee, has done justice to this Agreement and he has highlighted key points that are very persuasive in nature and, therefore, mine will just be to add beef on certain fundamentals.

Just to backtrack a bit, the UK delinked itself from the EU last year on 31<sup>st</sup> January. They were given one-year period upon which to ratify any protocols if any, before they eventually left on 31<sup>st</sup> of December. During this period, countries that were interested in doing business with UK on its own were given an opportunity to do so. It will be a remiss not to put it clear that there are so many countries that have ratified this same protocol with the UK, for example, Namibia, Zimbabwe, South Africa, Eswatini and many others. So, Kenya is not an exception and we are not in a unique or peculiar position on this treaty.

Kenya previously enjoyed the same free quota-free market access to the UK through the EU's market access regulation. That is what we have been relying on through the UK. Now that



they are on their own, Kenya has to move in, step forward and ratify an agreement directly with the UK. It is important to note that in the absence of these agreements, the trade between Kenya and the UK will not stop, only that our goods will eventually attract duty entering into the UK. That, therefore, means that our goods will be very expensive and less competitive in the UK. So, this Agreement is there to open up the Kenyan market into the UK.

This is about trade and investment. Looking at the Agreement, for those who have had time to ventilate or to look at it, it goes straight into the Big Four Agenda that this country has been grappling with and it also feeds into Vision 2030, which we have embraced as a nation. When you have trade between countries that is the only way money is made. When money is made, there comes with it several opportunities like jobs, our shilling that is heavily hit at the moment will stabilise against other foreign currencies and many other benefits that time may not allow me to underscore. Kenya, unlike our neighbours within the EAC, is considered a developing country. Our neighbours, with due respect to them, are still considered least developed nations. Therefore, the treatment that Kenya gets while in this particular trade is different from our neighbours. Our neighbours enjoy certain preferential treatments because they are least developed. Our neighbours at the same time enjoy free market access to EU in general just because of that position that they are in. However, Kenya being considered a developing nation, must move forward to ratify these agreements, so that we can trade quota-free and duty-free with the UK.

Several bodies presented their petitions in the course of making of this Agreement and no one was left out. You know our Constitution pays credence to public participation as an integral part of any process, legislative agenda or any treaty-making process. So, many people appeared either through the Ministry before it came to the Committee and others approached the Committee when the Speaker made a ruling that the Committee be seized of this matter. It is important to note that the public, the civil society... I thought I had 10 minutes.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): No, you have five.

**Hon. Jared Okelo** (Nyando, ODM): I will kindly ask you to allow me to put this into perspective.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): I will allow you an extra three minutes.

**Hon. Jared Okelo** (Nyando, ODM): Thank you, Hon. Temporary Deputy Speaker. So many people presented their petitions and it is important to note that this treaty does not undermine any EAC protocol or the African Continental Free Trade Agreement. It actually complements them. Negotiations involved several stakeholders and it is important that this House is seized of this matter that the Attorney-General's representative was present all through to look at the legalese and to also protect the interest of the Kenyan business community. So, we are not operating from the blues. This process involved those who play a key role in persuading the UK and the UK persuading Kenya to enter into this kind of agreement. No clause undermines the World Trade Organisation Treaty which is called the World Trade facilitation rules. The duty free status that Kenya will enjoy, in retrospect, the UK will not enjoy. If the UK brings in products into Kenya, they will attract taxation ranging from 10 to 100 per cent. The wisdom behind this was to help protect the vulnerable business enterprises within this country.

When countries such as the UK operate on a bigger economic pie, they can prefer subsidies which we cannot because of our smaller Gross Domestic Product (GDP). So, it is important to note that when these goods that may be competitive in the Kenyan market will be here, they will be much more in terms of pricing than what we have in this country and hence, our products will still be as competitive as they are at the moment. My Chair has ably said that Kenya's trade variations

with the UK was at a Kshs15 billion advantage, hence a balanced trade with the UK. If we allow ourselves to enter into this, hence create an opportunity for more products to enter into the UK, we are going to enjoy a bigger balance of trade than what we received in 2020. Our projection would be about Kshs50 billion in the first two years, over and above what Kenya takes to the UK at the moment.

There will be a tribunal to check on full implementation to avoid any abuse of the clauses. It is important that this House is seized of this information that there is a window of exit. If this does not work for us, we will divorce in the next one year. There is also a clause that says that after every five years, we will be subjected to amendments of this particular Agreement. So, Kenya previously enjoyed the same duty free and that is what we would want carried forward into this new Agreement.

Questions have been raised about how our industries will be safeguarded. That is also what my Chairperson alluded to, that the seven and 12 years' moratorium before absolute liberalisation is preferred. This will help Kenya to kick-start its ailing economy after COVID-19. Every Kenyan will tell you that we have been hard hit by COVID-19. The intervening areas, going forward, would be to have such agreements that allow Kenyan goods to be sold into the UK market.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Jared Okelo, you need to second.

**Hon. Jared Okelo** (Nyando, ODM): Before I do that, just one thing. It will create jobs, prevent volatility on Kenyan currency and avoid disruption in the global supply chains.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Jared Okelo. Give him the microphone.

**Hon. Jared Okelo** (Nyando, ODM): This is very important. Therefore, I second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Hon. Jared Okelo, I am sure you had a lot of things to say, but allow me to propose the Question.

*(Question proposed)*

Hon. Members, the first to go at this will be Hon. Ali Rasso, Member for Saku.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to comment on what I consider to be one of the most important agreements that Kenya is likely to sign in very many years. I thank the Committee for moving this Report. I like the English of Hon. Jared Okelo, but listening to those who are moving this Report, I almost think they have not had serious contact with it.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ali Rasso, I do not want to interrupt you, but it has just been brought to my attention that Hon. John Kiarie, Member for Dagoretti South, has a proposed amendment to the Motion. It will be fair to allow him to canvass this proposal before we do anything else.

Hon. Ali Rasso, just hold your horses. I will allow you to have the first bite at it. Let us deal with the proposed amendment by Hon. John Kiarie first. So, I will allow Hon. John Kiarie to move his proposed amendment. I hope this proposed amendment has been distributed to the Members. What is out of order, Hon. Aden Duale?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, with due respect to Hon. John Kiarie, Member for Dagoretti South, and looking at the Ratification Act, I will quote Section 8(4) of the Ratification Act, which says: "The National Assembly may approve ratification of a treaty with or without reservations", it is not the first time since 2013 that this

House is approving a ratification. My bone of contention is that the House does not have the powers.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Aden Duale, you are...

**Hon. Aden Duale** (Garissa Township, JP): Let me finish, if you allow me.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): I will not allow you. What you are saying finds a lot of currency with me sometimes, but let us not cut off Hon. John Kiarie's feet before he even attempts to run. This proposed amendment has been approved by the Speaker. I will allow you to say what you are saying after he moves his proposal. I will allow you.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, our own Standing Orders provide that you can stand at any time to raise a matter of constitutionality, procedure and Standing Orders. So, I want you to rule, reading Section 8(4) of the Ratification Act, so that we use the time available - and we have only one hour - efficiently.

*(An Hon. Member spoke off record)*

I am on a point of order, so you cannot be on a point of order.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Aden Duale, if you had listened to me, let us allow Hon. Member to move because the Speaker has approved, then you can raise all these issues that you are saying and we shall deal with it.

Hon. John Kiarie, proceed.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you, Hon. Temporary Deputy Speaker. I agree that the House is very limited in what it can do in ratifying a treaty. However, I am not seeking to amend the treaty. In fact, what has been approved by the Speaker is my effort to amend the Motion that has been laid here by the Chairman. I also understand that the Treaty Making and Ratification Act was passed by this House and was sponsored by a very good legislator, Hon. Odhiambo-Mabona. So, if the former Leader of the Majority Party, now a ranking backbencher, would reread the Standing Orders, he would understand that I am not seeking to amend a treaty. In fact, my amendment is to the Motion. So, with your permission...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): You are very well grounded. Proceed to the proposed amendment.

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Temporary Deputy Speaker, I propose:

THAT, the Motion that has just been moved by the Chairman be amended by inserting the words "subject to insertion of the following new recommendations (c) and (d)" after the word "EPA" on paragraph (b) on the Motion.

So, the new (c) shall now read as such that: "Any further review and/or revision of the Agreement should be subjected to the approval of the National Assembly as provided for by Section 10(2) of the Treaty Making and Ratification Act, 2012."

The import of this amendment is that, while canvassing this business, this Committee had the opportunity of having the esteemed Principal Secretary, in the person of Ambassador Weru, who in each and every contribution he made to every single clause that we were debating, would ask us to allow the Ministry to demonstrate to us after one...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kiarie, just move the entire proposed amendment then you can make your argument.

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Temporary Deputy Speaker, I beg to move: THAT, the Motion be amended by:

- (i) inserting the words, “Subject to insertion of the following new recommendations (c) and (d)” after the word “EPA” on paragraph (b) on the Motion –
  - (c) any further review and/revision of the Agreement should be subjected to the approval of the National Assembly as provided for by Section 10(2) of the Treaty Making and Ratification Act, 2012; and
  - (d) the Kenya Trade Remedies Agency be operationalised to oversee the implementation of the Agreement; and,
- (ii) Deleting the word “and” appearing at the end of paragraph (a) of the Motion;

As I was saying, the import of my first amendment, in addition to item (c), is the fact that, even as this was being canvassed at the Committee, with each and every question that was raised for the clauses that talk of the benefits, the very able Ambassador Weru kept saying to the Committee that we should kindly give him a year to demonstrate to us how this Treaty would be useful to this country.

The House shall need a reporting mechanism on the implementation of this Treaty as we go on so that, if there will be need for any change, review or amendment that will be part of the Treaty, it becomes part of what has been ratified. Once it is ratified, it becomes part of the laws of Kenya. For that reason, it will come back to this House for approval or rejection of any amendment or revision.

The second amendment is the fact that there is a schedule of items that will be benefiting from this tax-free trade. This will result in opening up our borders. We should be careful and ensure that no injury shall be imparted on our Kenyan economy; traders, businessmen or farmers. We shall need a body that shall check on those items and ensure that there is no injury. To my mind, that agency should be the Kenya Trade Remedies Agency. That is why I seek the operationalisation of the same.

It is very clear to me that it is in two parts. First...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kiarie, you need to move. You do not have the whole day.

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Temporary Deputy Speaker, I will conclude in a minute.

For us to do this, we shall need to operationalise the Kenya Trade Remedies Agency. Doing that will be in two parts. Parliament, that appropriates monies, will need to appropriate enough monies to ensure that the Agency is operational. The Government shall need to get the right experts, equip them and give them the capacity to be the watchdog of those matters.

I beg to move the amendments to the Motion on the Ratification of the Economic Partnership Agreement between Kenya and the United Kingdom.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Who is your Seconder?

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Temporary Deputy Speaker, I call upon Nominee 001, Hon. Sankok, to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Proceed, Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. The amendments have been moved very well by Hon. K.J. Therefore, I beg to second.

*(Question, of the first part of the amendment,  
that the words to be inserted be inserted, proposed)*

*(Question, of the second part of the amendment,*

*that the word to be left out be left out, proposed)*

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): There is nothing out of order. I have just made a proposal.

The person who will get the first go on this is the Leader of the Majority Party.

*(Loud consultations)*

Hon. Members, you know the rules of the House. The Leader of the Majority Party always has priority. If he asks for a chance, he gets it. He is contributing on the proposed amendment by Hon. Kiarie. Hon. Duale, you will have an opportunity immediately after the Leader of the Majority Party speaks.

Proceed, the Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. It seems we still need to take some Members for induction.

Rather than going through the technicalities, let me start by just opposing this amendment. I know Hon. Kiarie is a good scholar. He reads. If he had read the Report, he would have seen that the same things he is proposing are already included in the Report.

The first resolution of the Motion is that there will be a progress report on the implementation. Is that not what he is asking for? The Treaty Making and Ratification Act states that, for you to make any further changes, you must come to Parliament. We are basically repeating what is already provided for. This is a time-wasting exercise, perhaps, borne out of ignorance in terms of what the law says and not adding any value.

When he says that a certain agency should be operationalised and given the power to oversee this, which agency oversees this except Parliament? We have already said that the Cabinet Secretary will be reporting to Parliament. Which is this other agency? If, in the reorganisation of Government, that agency is killed, who will we hold accountable? Once Parliament has said that the Cabinet Secretary in charge of industrialisation will be reporting to Parliament, it is not up to us to start micromanaging the Ministry and look to operationalise some agency where we have some interests.

This is borne out of mischief. Much as I have a lot of respect for Hon. Kiarie, it is something that we should just reject in total as a House and go back to the Agreement so that we do not waste time on side shows when we have a major Agreement to consider. Our farmers and traders are waiting for us to consider, yet all we are doing is trying to create work for some agencies.

I object. I oppose this amendment and ask the House to oppose it.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, this is a House of rules. I want to take you to Section 9 of the Act. I want to read it for you. This House has only three functions. You cannot do anything outside those functions. If you do so, it would be illegal.

For the benefit of the House, let me read. Section 9 is on the approval for ratification by the National Assembly. Section 9(1) states:

“Where the ratification of a treaty referred to in Section 7 is approved by the National Assembly without any reservations to the treaty, the relevant Cabinet Secretary

shall, within 30 days from the date of the approval of the ratification of treaty, request the Cabinet Secretary to prepare the instrument of ratification of the treaty.”

That is one function if we approve.

Section 9(2) states:

“Where a treaty referred to in Section 7 is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified without reservations to the corresponding article in the treaty.”

That means the House can have reservations. Even if we have reservations, they will just remain that way. This House will approve the treaty. The reservations will not be binding on the Executive.

The last one, Section 9(3), states:

“Where the National Assembly refuses to approve the ratification of the treaty referred to in Section 7, the Government shall not ratify the treaty.”

This House has three functions. To ratify with reservations which are not binding and/or reject. My good friend, Hon. Kiarie, should propose an amendment to the Treaty Making and Ratification Act. The agency he is talking about requires an amendment of the Treaty Making and Ratification Act. Instead of bringing all those amendments, you should amend the Act. As we sit here, the Treaty Making and Ratification Act does not give this House any leeway. Those who sat in the 11<sup>th</sup> Parliament like Hon. Mbadi and Hon. Millie who originated this Act and I knew that this House needed to re-look at the Act. As of tonight, we have only three options. The Legal Department of this House which prepared this amendment embarrasses the Hon. Speaker by approving it. They should have rejected it on the basis of Section 9 of the Act. That is why I am raising the constitutionality of this amendment. Let us not waste a lot of time.

If you read Section 9 of the Act, please recall this amendment of my good friend. I will sit with him. I am sitting here tonight because part of my contribution is to amend the Act. I support that. Let us debate this Act right now. The House has three functions. I rest my case. That is my submission.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Let us have Hon. Ochieng’.

**Hon. David Ochieng’** (Ugenya, MDG): Hon. Temporary Deputy Speaker, I respect Hon. Kiarie. However, what is before us is amending a Motion. Where did we start amending Bills using Motions? He has said what should happen anyway. In case the Economic Partnership Agreement (EPA) that we will approve or disapprove tonight is reviewed, it will be a new agreement. They must bring it back. We cannot say that we will bring it back.

Two, I sponsored the Kenya Trade Remedies Act in this Parliament. It is not part of his role to oversee how trade agreements are implemented. We will create a body using a Motion which is illegal. It is not done that way. Much as the amendments proposed are in good faith and are meant to make the processes work, the argument before us today has too many other bodies that oversee it apart from Parliament. So, we cannot appropriate only one institution. If you allow these amendments to go ahead, they will exactly be illegal because they will be nugatory. They will be useless in their net effect.

Thank you, Hon. Temporary Deputy Speaker.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, allow me to put the Question. Order Members! Hon. Members, we must be charitable to Hon. Kiarie. He has done his legislative duty. He went through these amendments and found it fit to bring them before the House for consideration. We must be charitable to him and encourage him. Allow me to put the Question.

*(Question of the first part of the amendment, that the words to be inserted be inserted, put and negated)*

*(Question of the second part of the amendment, that the word to be left out be left out, put and negated)*

Hon. Members, debate will proceed. Hon. Rasso has a balance of four minutes. Proceed.

*(Debate on the original Motion resumed)*

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Temporary Deputy Speaker, on a point of order.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Otiende, what is out of order?

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Temporary Deputy Speaker, with tremendous respect, I agree completely with the House and the issues raised by Hon. Duale. However, I want your guidance because the Motion as framed appears to infringe those very rules.

Hon. Duale read Section 9 of the Treaty Making and Ratification Act. I invite the House to read Sections 8(4) and (5) of the Act. It appears to me that for whatever reason, our role in this House is to approve the Treaty as presented. If you add anything else, then it can only be a reservation which must then be part of the Treaty. I invite you to look at the annexure that was signed by Hon. Raychelle Omamo when the Treaty was being signed, but not ratified. It stops at where it says: "Approves the Ratification of the Economic Partnership Agreement (EPA) between the Republic of Kenya, a member of the East African Community of the one part and the United Kingdom of Great Britain and Northern Ireland of the other part." It continues and says: "And resolves that the Cabinet Secretary for Industrialisation or any other Cabinet Secretary under whom the Kenya-UK EPA is domiciled annually submits to the National Assembly-

(a) a progress report on the implementation of the Kenya-UK EPA; and,

(b) an Economic Impact Assessment Report outlining the gains, losses and developments arising from the implementation of the Kenya-UK EPA." All those words are not part of the Treaty. However, they are put in one motion.

I want your guidance. Do those words constitute a reservation in which case they will be part of the Treaty? If they are not, then they ought not to be part of what we are approving because then we are offending Sections 8(4) (5) and (9) of the Treaty Making and Ratification Act.

Secondly, Section 8 and 9 of the Act contemplates a role for both Houses: the National Assembly and the Senate. I am not aware of this. I hope that either under your guidance as Hon. Temporary Deputy Speaker or the Chair of the Committee, we will be guided on whether our act here is final or whether there is a contemplation, as it is contemplated in Section 8 and 9 of the Act for a role of the Senate because it is helpful.

Lastly, Section 8 (9) of the Act prohibits us from approving anything that offends any part of the Constitution. I hope that when the Chair or the Members will be given a chance to contribute, they will assure us that there is no part of the Constitution that is offended because that is part of the concerns.

Hon. Temporary Deputy Speaker, I will benefit from that guidance.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Otiende, we will respond to your reservations as we move along. For now, I will allow Hon. Rasso to complete his contribution.

**Hon. Ali Rasso (Saku, JP)**: Thank you very much, Hon. Temporary Deputy Speaker. As I start to contribute to this Motion, the two Hon. Gentlemen who are the Chair and the Member of that Committee appear as salesmen of this Motion, as opposed to giving this House the positive and negative aspect.

*(Applause)*

This Report is before us because the United Kingdom (UK) left the European Union (EU). It is as a result of Brexit. Neither the UK nor Kenya wanted to have this Treaty. Under the circumstances Kenya was approached to trade with them. What is in it for Kenyans? Does it meet Kenya's strategic and national interest in terms of doing bilateral trade with the UK? We are Members of the East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA). With the coming of African Continental Free Trade Area (AfCFTA), Kenya is part of the global Africa. We also signed Economic Partnership Agreements (EPAs) with the EU. Does signing this EPA with UK affect all other global trade arrangements?

We are members of World Trade Organisation (WTO) which is clearly setting out principles for general agreement on trade and tariff. Does this EPA meet all that threshold?

Hon. Temporary Deputy Speaker, I am happy I got the full Report. The only party that said that they will be affected as a result of this Agreement is the recyclers, those who deal with scrap metals and do recycling. All the others have said that this is a positive thing that must happen for Kenya. Looking at the circumstances and what is before us, the line drawn is very thin. We have a window of only 90 days to either agree to this or Kenya suffers consequences as a result of not signing the Agreement.

Hon. Temporary Deputy Speaker, what Hon. Kiarie proposed in the Motion does not change the price of fish as far as this Report is concerned.

This Report is about agriculture which is the backbone of our economy. We have been trading with the UK for hundreds of years. What they must begin to allow is value addition of our agricultural goods. That particular part of our sector must grow.

Finally, it is about competitiveness. Kenya is competitive to an extent. But if we are going to trade with the UK one on one, let it not affect other standing arrangements with other institutions.

Thank you, Hon. Temporary Deputy Speaker.

*(Applause)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us hear Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. I am here tonight because I read this Report and the addendum and I prepared. I will deal with



three issues. One, Kenya and UK trade relations and the proposed EPA. Two, the pertinent issues and possible gains and finally, I will give my submissions on the Treaty itself.

Our country started the Economic Partnership negotiations with the UK that gave birth to an EPA that was signed on 8<sup>th</sup> December 2020, with a grace period of 90 days agreed upon to be the period within which both parties must ratify the EPA. The National Assembly is required under Section 8 of the Treaty Making and Ratification Act 2012, to approve the ratification of the Agreement, which should be done on or before 8<sup>th</sup> March 2021, which was yesterday. So, this House, in fact, must conclude this matter today. That is my submission.

The free trade agreement between Kenya and the UK is based on, if people have read the Contonou Agreement that was signed between the European Union with African, Caribbean and Pacific. The exports from Kenya, which the Chair and the Seconder did not put clearly, are primarily on agricultural products and manufacturing. This includes our tea, spices, edible vegetables, the live trees and plants, machinery and mechanical appliances and, of course, preparation of fruits, vegetables and nuts

The Kenya and UK EPA has certain salient issues. I am very happy tonight that the Cabinet Secretary in charge of this area is sitting here so that she prepares, because under the Act, the Cabinet Secretary under Section 17 has powers to withdraw. So, we should not fear. Even within six months the Cabinet Secretary has powers under Section 17 to withdraw Kenya from this Agreement.

The Cabinet Secretary under Section 18 is supposed to make rules. So, what we are saying tonight is that she can incorporate the pertinent issues in the rules. When I raise these issues, I want the Cabinet Secretary and the Committee to take them very seriously.

We must deal with the rules of origin. Will Kenyan produce transit via the EU with no limited value addition? What happens if our goods on the way to UK pass through some of the EU countries? That must be addressed. What happens to our development cooperation or aid with the UK? Will this be part of the trade Agreement? If yes, what kind of institutional arrangement have they put in place and what is the budget?

Finally, there is no clarity on the development aid we have with the UK on how much the UK will provide in development fund set up under the UK Kenya Government agreement which is in this document. We need to know the scope of the trade Agreement. What could be the scope of the Agreement and the implications it will have on key sectors in agriculture and manufacturing, particularly the mitumba industry?

Hon. Rasso raised a very pertinent issue. What will be the implication of our regional integration? This House has approved the East African Community. We are in the ....

Hon. Temporary Deputy Speaker, if you allow me another two minutes, I will be very happy.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Duale, I have problems because all these Members want to speak to it.

**Hon. Aden Duale** (Garissa Township, JP): If you allow me....

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): You have one minute to finish, Hon. Duale. All these Members want to speak.

**Hon. Aden Duale** (Garissa Township, JP): Let me then go to my submission. I will submit an amendment to the Treaty Making and Ratification Act to provide for Parliament to be involved in the initial negotiation, just like it happens in the House of Commons. This problem could not have happened if the Departmental Committee on Trade, Industry and Cooperatives had sat with

the Executive; with Madam Maina and Ambassador Weru when they were negotiating with the UK. We will propose an amendment to the Act passed by my sister.

Finally, the issue raised by Hon. Otiende Amollo is food for thought. Before an Act comes to this House and before the Leader of the Majority Party tables it, the Legal Department must deal with Section 9. Does it offend our Constitution? That, we must be told in black and white.

I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Hon. Oundo, you have the Floor.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. I stand here to support the approval and the recommendations of the Committee because I am a Member of the Committee.

Before arriving at that decision, we asked ourselves very pertinent questions. The first question was: What is the historical relationship between Kenya and the UK in trade matters? The second was: Is this EPA a new animal or we are simply rolling over from the 2016 paper that was signed between EAC and the EU? The question at hand here, and many Members have continuously asked is: What is in it for Kenya? Historically, Kenya has always had a positive trade balance with the UK. It is contemplated based on the projections submitted by the various economists both in the Office of the President and the Ministry itself, that ratification of this treaty will enhance trade arrangement between Kenya and the UK. We stand to gain much more.

There have been many issues raised on whether it means that the ratification of this Agreement will have items coming from the United Kingdom duty free. That cannot be far from the truth. It is a lie because we already have an existing arrangement of several items that are duty-free, that are quota-free. We are simply retaining the status quo. The UK exited European Union (EU), and it is trading on its own. If Kenya does not ratify, it therefore means that Kenya will not be given those arrangements of duty-free, and quota-free because Kenya is not a least developed country (LDC) like her other colleagues in the East African Community.

The ratification of this agreement does not in any way interfere with the existing trade agreement all over the world. The African Continental Free Trade Agreement still stands as well as any other agreement they have with any other trading partner. The agreement provides that, in the case there is any other arrangement that is progressive for the purposes of regional integration, the members to the parties can attend to the issues.

Let me address a few issues that had been raised. First, this is a trade agreement. It is not a development agreement. Article 3 of the Agreement which is the relevant Article allows the Government of Kenya and the UK to enter into any other arrangement under services and trade. It will be subjected to the same arrangement of treaty ratification as provided for in Article 10 of the Agreement. So, if there are any amendments or changes to be made, they will have to go through the process of ratification.

There is the issue of trade remedies which has been the plank of the argument of my colleague, Hon. Kiarie. Reading the totality of the agreement, it makes reference to the remedies provided for under the World Trade Organisation (WTO) which are far much superior compared to our agreement. In any case, this Agreement provides that we protect the nascent industries in this country.

Article 114(2) of the Agreement provides that in the event that there is any additional or higher import of goods from the UK to Kenya, Kenya can impose temporary tariffs and taxation to last for 48 months so that we address that trade imbalance or the chances of damping of substandard goods.

I urge my colleagues that we are faced with two or three options here. As Hon. Duale has said, we either approve, reject or approve with reservations. As a Committee, we have gone through that Agreement by toothpick. We have checked every single item, and we assure the House that the drafting, the text and everything is for the benefit of the people of Kenya.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order! Just hold on, Hon. Oundo. Hon. Members, even as you debate this, I would like you to remember that this is something that has timelines. We have to complete it tonight; either approve it or reject it tonight. So, I would like to ask those Members who are walking away to also remember that we have a mandate to this country to deal with this matter.

Proceed, Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, questions have been raised on the issue of reporting. Clauses 15 and 16 of the Treaty Making and Ratification Act provides for reporting. Likewise, the council of the Economic Partnership Agreement (EPA) between the Republic of Kenya and the UK as provided for in the Agreement provides for reporting. So, on where we stand as a Committee and for the dedication we have for the people of Kenya, we request the Members to approve the Agreement because it is good for the country. Whenever there are any issues to be addressed, there are mechanisms in the Agreement to address any disputes, challenges and changes that will be necessary in due course.

With those few remarks, I support the approval, and likewise I request my colleagues to do the same. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I wish to state, from the onset, that I will abstain. I will neither vote yes, nor no because of the content of the treaty. I thank the Leader of the Majority Party and even the Chairperson of the Committee for having given us a documentation that we are trying to catch up with in the shortest time possible. However, I do not have the volume which has statistics; that is Volume 2.

Part of the reasons why I am saying I will abstain, is that I will neither vote yes, nor no, because I represent very specific interest in the House. I represent women's and children's interests as usual, and since I heard my brothers who represent Persons with Disabilities (PWDs), I also very strongly represent the interests of fishermen.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Millie, just do the right thing.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Which is?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Putting on your mask.

*(Laughter)*

*(Hon. (Ms.) Odhiambo-Mabona put on her mask)*

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Speaker, usually, the challenge is that when I do this, it produces some moisture which becomes very difficult to breath, but let me try.

The provisions of the Report that has been given by the Chairperson is why I am in this complex situation because I keep hearing different voices. One of the voices I heard is that it does

not cater for fishermen, but when I look at the Report which is not the treaty, it seems to have good provisions. As a lawyer, sometimes what is reported is very different from the text.

Page 5 says that the Kenya marine and inland fish make a significant portion of export to the UK, and Article 87 to 89 of the Kenya-UK EPA focusses on fisheries and aquaculture which endeavours to promote effective exploitation, conservation and management of inland fish resources and within the exclusive economic zones. It also talks about EU commitments to capacity building, training programmes and to improve the competitiveness on the inland fisheries and management or export of market chains.

If, indeed, that is in the text of the Agreement, then I would be very happy because my only concern from what I was getting - unfortunately, I do not have the text as I have said - is that we are being told that when you leave it open, it means that the fishermen from the UK can come with more superior machinery and access our fish, while we will be going with what we call *olow* in *Kijaluo*. What is *olow* in English, Hon. Otiende?

*(Hon. (Dr.) Otiende Amolo spoke off record)*

It is a hook. We will be going to Northern Ireland with a hook while they will come here with very big machinery, for instance, trawlers to fish.

Based on this, and that is why I am saying that I will be going by faith, if what has been said here is there, then it will protect fishermen. I am only saying that I am going by faith because I have not looked at the text. The devil is in the details of the legal document which is the treaty itself.

I am very happy that I brought the Treaty Making and Ratification Act. It has gone through some amendments, and I would be very happy if we can still look at it at this point, especially because Members are now considering some of the areas that may be problematic. However, I still believe that maybe there is no problem, if the Executive does it because treaty making is actually the role of the Executive.

Under Article 2(6) of our Constitution, Parliament must have a role because it is a law-making body, and that is why we have this. It will be a good time to relook at the Treaty Making and Ratification Act.

Thank you, Hon. Temporary Deputy Speaker, and I abstain as I have indicated.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us now have Hon. Mutunga, the Member for Tigania West.

Hon. Kasalu, Hon. Member for Kigumo and Hon. Member for Nambale, these masks are not suggestions. It gets tiring to keep reminding you. It is your health and everybody's health. Just wear these masks. It is very difficult.

Proceed, Hon. (Dr.) Mutunga.

**Hon. John Mutunga** (Tigania West, JP): Thank you, Hon. Temporary Deputy Speaker. I hope you will give me another minute.

I stand to support this Report. I have taken time to look at the Report and I would like to, first of all, ease the tension in the House by creating some level of comfort amongst the Members. First and foremost, this paper is not any different from the EAC-EU Economic Partnership Agreement. That is probably why it took a short time to debate or negotiate.

I would like to specifically point out a few issues that we need to beware of. One of them is what it is doing for us as Kenyans and what it is doing for the UK. I will point out exactly the number of items we are talking about in our market, duty-free, upon signing this agreement. The

number of items that Kenyans will sell to the UK is small. They are mostly agricultural and have very little of what will come from the transformation process.

On the other hand, immediately this agreement is signed, the UK will have an opportunity to place 1,934 items or what we call “tariff lines” on the Kenyan market. I am aware of the fact that we can argue that, but we may or may not buy from them, and that we can buy from anywhere else. However, it is important for us to note that, immediately after signing, there is a possibility of 1,934 items from the UK landing in our market. Seven years down the line, we will have another 1,082 items that will be progressively liberalised for a period of about seven years so that in 17 years these items will also be landing in our market duty-free.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, you do not have to lift your hands at all. This is a House of debate. Let the Member for Tigania contribute.

**Hon. John Mutunga** (Tigania West, JP): Hon. Temporary Deputy Speaker, we will, in 25 years, have an additional 990 items. What am I trying to say? I am saying that the treaty allows 4,006 items from the UK to land in our market duty-free in 25 years.

I now want to point out a few implications of this scenario. One is that it is time for Kenya to wake up to the realities of development and organise itself to basically compete and to industrialise and start processing and producing for the market. Signing the EPA immediately will lead us into competition. Based on that, this wakeup call should enable us, as a country, to embark on transformation. We are doing very little transformation. What we are selling in the UK are primary goods and very little manufactured or processed goods.

The other issue that is important for us to look at is that it is advantageous if, and only if, we take this opportunity to position ourselves to compete in terms of the number of goods or the tariff lines that we place on the UK market.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Sankok, what is out of order?

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise under Standing Order 95. Reading the mood of the House, and because of time constraint and the fact that this Treaty will lapse today, I implore you to call upon the Mover to reply.

*(Applause)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, Hon. Sankok having stood in his place and invoked Standing Order 95 that the Mover be called upon to reply, allow me to put the Question.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

Mover, I will allow you. You may donate a minute or two to the Chair of the Departmental Committee on Finance and National Planning, who, I am sure has something to say.

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Temporary Deputy Speaker. I donate two minutes to my Vice-Chair, two minutes to Hon. Wanga and one minute to Hon. Sabina.

*(Hon. (Ms.) Wangari Mwaniki stood in her place)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order, Members. Member of Kigumo, resume your seat. That was a misnomer. When we proceed in this manner of procedure, the Mover cannot donate anything. He has nothing to donate. The House has resolved.

So, Mover, proceed to reply.

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Temporary Deputy Speaker. I want to thank the House for sincerely looking through the document and bringing out some very important issues. I want to particularly thank the Members of my Committee, who have endured long hours to bring this important Report to this House with fine details. I also thank Members who were Friends of the Committee; like Hon. Jude Njomo, Hon. John Kiarie, Hon. (Dr.) Kanyuithia, Hon. Shabbir Shakeel, Hon. Adan Yussuf, Hon. Mboni David, Hon. Kuria Kimani, and Hon. Cate Waruguru. We cannot take this for granted.

I beg to reply.

**Hon. Members:** Put the Question!

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order, Members! Allow me to put the Question.

*(Question put and agreed to)*

*(Applause)*

Hon. Members, it is well. Hon. Kaluma, you do not always have it your way. You let it slide to the other side. Do not worry too much. What did you want to say Hon. Kaluma?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Temporary Deputy Speaker, it was my intention to pass this Report. I am grateful to the House for the approval because I had read it but, maybe, for our future dealings, may it go on record that such an important Treaty should be given proper latitude for debate by the House – more so considering the fact that the House is not involved in negotiating treaties from the very beginning? This has been a very short and too rushed time for Parliament to seriously consider a matter of this magnitude.

Thank you, Hon. Temporary Deputy.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order, Hon. Members! For the convenience of the House, I direct that we shall not move on with the next business and that we shall adjourn the House at this time. I direct that the next business on Committee of the whole House be considered at a time it will be set down for consideration.

## ADJOURNMENT

Hon. Members, the time being 8.50 p.m., this House stands adjourned until Thursday, 11<sup>th</sup> March 2021, at 10.00 a.m.

The House rose at 8.50 p.m.