

*Leave of Absence*

*Tuesday, August 11, 1992*

**SENATE**

*Tuesday, August 11, 1992*

The Senate met at 1.30 p.m.

**PRAYERS**

[MR. PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. President:** Hon. Senators, I have granted leave to Sen. Martin Daly to be absent from sittings of the Senate during the period August 5, 1992 to August 16, 1992. I have also granted leave to Sen. Everard Dean to be absent from sittings of the Senate with effect from August 11, 1992 until he has recovered from his short illness. I have also granted leave of absence to Sen. Pundit Ramcharan Gosine from today's sitting of the Senate.

**SENATOR'S APPOINTMENT**

**Mr. President:** Hon. Senators, I have been advised that His Excellency the President has appointed Mr. Roland Crawford to be a temporary Senator, with effect from August 11, 1992, and continuing during the period of illness of Sen. Everard Dean.

**OATH OF ALLEGIANCE**

*Sen. Roland Crawford took and subscribed the Oath of Allegiance as required by law.*

**ANTI-DUMPING AND COUNTERVAILING  
DUTIES BILL**

Bill to authorize the imposition of anti-dumping duties and countervailing duties where goods have been dumped or subsidized; to provide for an Anti-Dumping Authority to investigate dumping or subsidizing of goods; to repeal the Customs Duties (Dumping and Subsidies) Act, Chap. 78:04; and for related purposes; brought from the House of Representatives [*The Minister of Trade, Industry and Tourism*]; read the first time.

*Motion made,* That the next stage of the bill be taken at a later stage of the proceedings. [*Hon. B. Kuei Tung*]

*Question put and agreed to.*

**PAPERS LAID**

1. Loan Contract between the Inter-American Development Bank and the University of the West Indies. [*The Minister of Planning and Development (Hon. Lenny Saith)*]
2. Guarantee Contract between the Government of Trinidad and Tobago and the Inter-American Development Bank. [*Hon. L. Saith*]
3. The Twenty-Fourth Report of the Salaries Review Commission of the Republic of Trinidad and Tobago. [*Hon. L. Saith*]
4. Report of the Auditor General on the Accounts of the Trinidad and Tobago Unit Trust Corporation for the year ended December 31, 1991. [*Hon. L. Saith*]

**ORAL ANSWERS TO QUESTIONS**

**Public Utilities Commission  
(Abolishment of)**

**35. Sen. Wade Mark** asked the Minister of Public Utilities:

Could the Minister indicate whether the Government, based on the World Bank conditionalities, intends to abolish the Public Utilities Commission and to allow rates to be determined by market forces?

**The Minister of Public Utilities (Hon. Morris Marshall):** Mr. President, the response to the question is as follows:

The Minister of Public Utilities hereby advises this honourable Senate that at this time the Government does not plan to abolish the Public Utilities Commission.

**Sen. W. Mark:** Mr. President, could the hon. Minister indicate whether the Government is committed to continue subsidization of these public utilities, whether it is WASA, PTSC, or T&TEC?

**Hon. M. Marshall:** Mr. President, I have a difficulty understanding the linkage with the substantive question. Here we are talking about the Public Utilities Commission, and then we have a supplementary question about continued subsidies for the utilities.

**Sen. W. Mark:** Could the hon. Minister indicate therefore, whether the Government has any intention to demonopolize the public utilities and as a result allow market forces to determine their rates?

**Hon. M. Marshall:** Mr. President, that same question was asked last week, and I responded to it then.

**1.40 p.m.**

**Water and Sewerage Authority  
(World Bank Conditions)**

**36. Sen. Wade Mark** asked the Minister of Public Utilities:

Could the Minister indicate whether alternatives to the World Bank conditionality in respect of the Water and Sewerage Authority have been explored by his ministry so as to avoid the possible retrenchment of workers?

If the answer is in the affirmative, could the Minister outline these alternatives and state whether these would be acceptable to the World Bank?

**The Minister of Public Utilities (Hon. Morris Marshall):** Mr. President, the response to the question is as follows:

The objective of the structural adjustment loan from the World Bank with respect to the Water and Sewerage Authority is to assist in the transformation of WASA into a viable, self-sustaining enterprise.

In this context, the Ministry of Public Utilities and WASA continue to explore means of meeting the said objective, due consideration being given to alternatives which would avoid the possible retrenchment of workers.

**Sen. W. Mark:** Could the hon. Minister indicate the quantum of workers targeted for retrenchment under the World Bank structural adjustment arrangement?

**Hon. M. Marshall:** Mr. President, I am not aware that the World Bank's requirements targeted any number or numbers of persons at WASA. What is required as a result of the agreement and what is required, moreso for the country, is to make WASA efficient.

We have made this point repeatedly. I want to emphasize it is not a question of sending workers home. It is a question of making the utility efficient. I think that I have sought to put the response to that as precisely as I possibly can.

**Sen. W. Mark:** Could the hon. Minister indicate whether the ministry has devised a plan to avoid the retrenchment of workers at WASA? If that has been done, could the Minister share with us some of the elements of the plan?

**Hon. M. Marshall:** From day one, we have been working with that particular objective in mind, as I said before, to make WASA efficient. It is not feasible as yet for me to go through the details of approaches. That will come in due course.

In fact, we are holding a press conference tomorrow to make some decisive statements about WASA. I think that the Senator should follow the details of that press conference.

**Sen. Prof. Spence:** Would the hon. Minister agree that the best way to make WASA efficient is to privatize it?

**Hon. M. Marshall:** I do not necessarily share that view. While we feel that there are many benefits from the privatization of these resources, I do not hold the view that is necessarily the way to ensure efficiency. However, we are looking at all the options.

### **Truck-Borne Water (Cost of Supply)**

**37. Sen. Wade Mark** asked the Minister of Public Utilities:

Could the Minister indicate the total cost to the taxpayers of supplying truck-borne water to the various areas, where pipe-borne water was not available for the period 1989, 1990 and the projected cost for 1992?

**The Minister of Public Utilities (Hon. Morris Marshall):** The response to the question is as follows:

The cost of the supply of truck-borne water to the various areas where pipe borne water was not available for the years 1989 and 1990 is as follows:

Year	Cost \$ million
1989	3.2
1990	4.1
1992	4.5 (projected cost)

**Sen. W. Mark:** Could the hon. Minister indicate what percentage or number of the population still depends on a truck-borne water supply in Trinidad and Tobago?

Secondly, could the hon. Minister indicate whether he is aware that contractors are charging people for the supply of truck-borne water?

If he is aware, what steps is the ministry taking to abolish that practice?

**Hon. M. Marshall:** In response to the first question, it is difficult for me to say what percentage of the population depends on a truck-borne supply. I can get that information for him if he so desires.

As regards the second part of the question about drivers charging moneys, I have been told that there are some practices taking place. It is difficult for me to say how valid the reports are. It is a matter of concern to the Minister and the ministry. We are taking some action on that. There is no way, if the Ministry has concrete information, that will be tolerated. All we want to do is to catch a few persons and we will deal with them accordingly.

**Sen. W. Mark:** Is the Minister aware that widespread corruption exists at the upper echelon of WASA in the distribution of truck-borne water in Trinidad and Tobago?

Secondly, is the Minister aware of a project called La Gloria in which senior WASA engineers have been involved in the misappropriation of equipment, money and funds generally, to develop a private property scheme at La Gloria?

**Hon. M. Marshall:** I am not aware of what he is talking about. As I said before, I want to make it abundantly clear that this Minister and this Government will not support or condone corrupt practices. At the same time, I am not going to engage in *mauvais langue* and street talk. There is a lot of that going on about the place.

If he has information that will help me in that regard, I should be most pleased to have it. If we have concrete information and evidence to support what he is saying, the necessary action will be taken.

I cannot recall what the first question was.

**Sen. W. Mark:** The first question was whether he is aware that there is widespread corruption at the upper echelon of WASA in the distribution of truck-borne water in Trinidad and Tobago?

**Hon. M. Marshall:** I am not so aware. Again, I want to return to my response in respect of the second part of the question. If he has that information, let me have it.

**Sen. W. Mark:** Mr. President, I have substantial, concrete evidence—

**Mr. President:** You are making a statement. Do you want to ask a supplementary question?

**Sen. W. Mark:** I will put it in this way. If the Minister is committed to what he has indicated, there is sufficient evidence on this particular matter which I should make available to him.

**Mr. President:** That is not a question.

**Sen. W. Mark:** I am sorry about that.

**Mr. President:** I am sure the Minister will take note of what you are saying.

#### SWAHA (INC'N) BILL

*Question put and agreed to,* That a bill to provide for the incorporation of SWAHA and matters incidental thereto, be now read the first time.

*Bill accordingly read the first time.*

#### ORDER OF BUSINESS

**The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith):** Mr. President, I seek leave of the Senate to proceed with the next stage of the Anti-dumping and Countervailing Duties Bill 1992, before Bill No. 1 on the Order Paper.

*Leave granted.*

#### ANTI-DUMPING AND COUNTERVAILING DUTIES BILL

*Order for second reading read.*

**The Minister of Trade, Industry and Tourism (Sen. The Hon. Brian Kuei Tung):** Mr. President, I beg to move,

That a bill to authorize the imposition of anti-dumping duties and countervailing duties where goods have been dumped or subsidized to provide for an Anti-Dumping Authority to investigate dumping or subsidizing of goods, to repeal the Customs Duties (Dumping and Subsidies) Act, Chap 78:04; and for related purposes, be now read a second time.

Mr. President, you will recall that, on a previous occasion, I had indicated that the Government had been committed to trade reform, partly in response to the conditionalities that were imposed when the previous government approached the

World Bank and other lending institutions, and agreed as one of the conditionalities that some attempt at trade liberalization would take place. One of the conditionalities of that trade liberalization included the removal of the Negative List and, at that time, the previous administration agreed that a part of the Negative List would have been removed by December 31, 1990, and the rest by December 31, 1991. Unfortunately, only about 40 per cent of the Negative List was removed around September of 1991 and a new government came into place before there were any further attempts at removing the list.

Upon assuming office the new Government, conscious of the commitment of the previous administration in respect of the removal of the Negative List, but even more conscious of the fact that there was need for a number of safeguard mechanisms to be put in place before the removal of the list, undertook a review of some of these safeguard mechanisms, and in May 1991 brought a Finance Bill, in which the first major safeguard mechanism was included, and that is, a regime of import surcharges, which was intended to offer some measure of protection to manufacturers, to stem the flood of imported goods which was expected.

Today, I have the honour of bringing a second such safeguard mechanism, one in which anti-dumping and countervailing duties will be imposed in cases where goods are proved to have been dumped or subsidized by an exporting country's government.

The other aspect of our trade reform programme really comes from the fact that the present Government recognize that there has been a subtle change taking place over a number of years in the global economic mainstream in activities which our Government recognize Trinidad and Tobago cannot afford to ignore.

Having addressed the rest of the Negative List, as at June 30, 1992 I wish to inform this honourable Senate that while a great deal of the Negative List has been removed, some items have remained.

These items have had the blessing of the World Bank and the other lending agencies. The items referred to are matters that affect public health, our national security, and items that are subject to an international agreement, for example, the Caricom Treaty, which is an agreement among nations in the English-speaking Caribbean.

We have also retained primary agricultural products because of our need to protect the agricultural sector. Some of the items that remain as a result of this

include basic primary agriculture, for example, potatoes, onions and poultry. I must advise this honourable Senate that processed food cannot remain; by processed food, I mean, things like sardines and salmon, which have been processed and canned. I should like a clear distinction made between primary agricultural products and processed food.

I would further advise this honourable Senate that in imposing this regime of import surcharges, we have recognized that this study, having been done by technocrats as carefully as they could, a number of anomalies have surfaced, in the sense that certain items were given import surcharges but on further consideration, do not seem to warrant it. In some cases, we have not imposed import surcharges in areas where there seems to be a warrant for them at this time. So that my ministry is currently undertaking a review of the entire import surcharges with a view to eliminating these anomalies.

The bill before us, therefore, is one which seeks to put in place an effective programme for the monitoring and control of subsidies and dumping. The main element of these is the enactment of this Anti-dumping and Countervailing Duties Bill, 1992, which we hope to use to replace, by way of repeal, the existing Customs Duties (Dumping and Subsidies) Act.

Although this piece of legislation will allow for the imposition of duties similar to those which can be levied under the existing legislation, these duties would, however, be subject to the conditions applicable under the GATT Anti-dumping Code, and this is in keeping with current international trade practice. One must remember that the existing legislation predates the GATT Anti-dumping Code, and this new piece of legislation is intended to recognize the GATT Anti-dumping Code and the need to update the older legislation. The duties which will be proposed under the legislation shall be known as the Anti-dumping and Countervailing Duties.

With the dismantling of the Negative List, in respect of non-oil products, manufacturers could be best viewed in the context of the evolution of our own industrialization policy in Trinidad and Tobago.

I think I should give some background on the need to have anti-dumping and countervailing duties levied on goods and hope that I give a clear distinction between the application of anti-dumping duties, as opposed to the application of countervailing duties in the case of subsidies.



In the case of anti-dumping, the need for anti-dumping legislation can best be summed up in the question, Why would a country or foreign company think it is in their best interest to sell products for less than fair value, or to subsidize their exports? The answer to such a question is, a foreign company may decide to dump goods in Trinidad and Tobago in order to get its foot into the Trinidad and Tobago market, or simply to increase its market share here. It may also use dumping as a temporary means for increasing exports if there is a slack demand in its own home market, or as a long-term strategy for obtaining economies of large-scale production, without cutting domestic prices.

**2.00 p.m**

However, should the company make enough money in its home or other markets to offset the lost profits from dumping, it may be able to drive out its competition and take control of our own local market where it is dumping goods. At that time the foreign company can then set whatever price it chooses. As well as, for a number of reasons—political, social, maybe even economic—a government may also decide to provide subsidies to promote certain industries; to promote employment in the home market, or for the development of specific regions within that home market. In such a case, a government may decide to provide subsidies to promote the export of non-traditional goods in order to stabilize or diversify their development. So, you see, the bill is intended to address both dumping and subsidies and hence it derives its name, “Anti-dumping, and Countervailing Duties Bill.”

This bill must be seen in the context of a programme of complete trade reform, a package of which includes some things, which I have already mentioned, like the import surcharges and this Anti-dumping and Countervailing Duties Bill, and which will have a number of other companion measures which are necessary to ensure that trade reform takes place in an environment which is both friendly and conducive to business growth, expansion and development. Such companion measures include, for the sake argument, a review of Customs administration, to ensure that Customs, which have been described as being the most vulnerable point in the trade reform programme, improve their efficiency to the point where one businessman is not put at an unfair advantage or disadvantage, when compared to another businessman importing similar or like goods.

I say this because already we have begun to see that with the removal of the Negative List a number of items are creeping into our local market place, in some cases where they have already been decided to be banned goods, or where these goods are coming in in areas and paying duties far below what the required duty should be. So that these goods are being sold by one set of businessmen at a price far lower than the same goods that are brought in by a more legitimate importer and who is being penalized because he is legitimate and paying the right duties.

Furthermore, we have situations where inferior goods are being brought into Trinidad and Tobago and are passed off as first quality goods, attracting little or no duties, and are being sold in direct competition with first quality goods, much to the chagrin of legitimate businessmen, and much to the disappointment of the unsuspecting consumer.

So, as part of the package it is the Government's intention to ensure that Customs administration improve to the point where everyone can expect a fair and level playing field so that business can prosper.

In terms of business legislation, there is going to be need for a great deal of legislation review. In particular, the Government plan to bring soon to Parliament an Unfair Trade Practices Bill, in which a number of other unfair trade practices, not yet addressed, will be included. One recognizes, however, that such an Unfair Trade Practices legislation impinges on a number of other pieces of legislation. I say this because we should see unfair trade practices almost in the light of being called cheating, and cheating literally can be found under almost all legislation that deals with unfair practices.

It means therefore that we have an obligation to ensure that there is one omnibus piece of legislation which deals with this practice of unfair trading. This piece of a legislation, however, could take several months, and we are at present looking at ways and means of finding the right expertise to deal with this particular issue.

There are going to be other areas which we would need to tighten up, and here I speak about areas like consumer protection legislation: the strict enforcement of consumer legislation, a review of the Metrology Bill, a review of standards, a review of the workings of the Standards Bureau—just to name a few. I mention this because, again, this should be seen, not in the light of being an imposition on the consumer, but in the light of being consumer protection, to ensure that the consumer knows what he is paying for, understands the choice that he is now

being given with the removal of the Negative List, and is given the information for him to make that choice wisely.

At the helm of this trade reform programme will be the Ministry of Trade, Industry and Tourism. This ministry is committed to ensuring that we create an environment in which no longer would there be patronage, protection, and a few benefiting from trade policies, but, instead, we see an atmosphere in which everyone has an equal opportunity, everyone has an opportunity to understand the rules by which business is expected, and every one has an opportunity, as it were, on a level playing field—which has eluded us in the past.

There is no doubt that there is a need—a very strident need at that—for the officials of the Ministry, the ministry of Trade, Industry and Tourism, to understand that in the context of trade reform, one expects a certain type of aggression in which the vocabulary is changed from control and constraint to words like development, encouragement, empowerment, which will allow businessmen an opportunity, first, to set up new investments—and this is for both local and foreign—and an opportunity in which business is encouraged as opposed to business being discouraged through obstacles of one kind or another, whether bureaucratic or otherwise.

**2.10 p.m.**

In changing this focus my ministry understands clearly the facilitation role that is now required of it. The serious mandate that Government have today is to address the unemployment ills of this country. We cannot do that unless we are in a position to attract investment of all kinds; whether it be capital, equity or loan, in the sense that it may also be either local or foreign and, therefore, in spite of the best urgings and changes we may have for the ministry, in spite of whatever focus the ministry takes, it is going to be important that the rest of the population understand that there is a need as well for us to change our old attitudes and habits and, in particular—I speak here of the question of thrift.

It is because of savings, whether local or foreign, that investment is generated. Investment is not generated because we wish it; investment is generated because somebody, somewhere, has had the foresight to save and in so doing has been able to provide money for investment which in turn is going to provide us with the job creation that we need.

In preparing this Anti-dumping Bill, we took pains to consider what has been done in certain other countries and while there is a clamour by certain sections of

business to have the Anti-dumping and Countervailing Duties Bill amalgamated with other unfair trade practices legislation, and in spite of the difficulties which I have already described in addressing unfair trade practices, and in order to ensure that the Bill does not take an undue length of time to reach here, we are, today, piloting the Anti-dumping and Countervailing Duties Bill, a bill which, in countries like Australia, New Zealand and Canada, which all have anti-dumping legislation, but countries which have not allowed an omnibus piece of legislation, but instead have separate pieces of legislation for anti-dumping as opposed to unfair trade practices.

What I am saying is that today, for a number of reasons, we have one bill which addresses only the question of dumping and subsidies or bounties and soon we will be bringing a bill that deals with unfair trade practices.

The point I am making, further, is that many larger countries have recognized the difficulty in trying to package them as one omnibus piece of legislation. Even the United States, where there is an omnibus Trade and Competitive Act, which was enacted in 1988, the Anti-dumping Act has not been superseded or merged with any other Act.

We also had the choice of reviewing and revising the old Act, but we chose instead to repeal sections of the Customs Duties Act and bring forward a more relevant piece of legislation, updating it, as it were. In particular, I would ask Members of the Senate to review certain sections of the bill which bring into being an Anti-dumping Authority, which Authority is going to be charged with the responsibility of carrying out the functions of the bill.

I should just like at this point to highlight some of the areas of the bill which we consider to be particularly important and areas which are a little bit new to the old legislation. Clause 5 permits the Minister, by Order, to impose anti-dumping duty—and I may mentioned that some people seem to be confused as to where the teeth of this bill are, whether they are in the Ministry of Finance or in the Ministry of Trade, Industry and Tourism.

I wish to make it very clear that the Minister here referred to is the Minister of Trade, Industry and Tourism and that he has the authority to appoint his Permanent Secretary or some other body, to be the Anti-dumping Authority. Clause 5, as I said, permits the Minister, by Order, to impose anti-dumping duty where he is satisfied that goods have been imported into Trinidad and Tobago in circumstances which are to be regarded as dumped, under the provisions of the bill.

I should also like to ensure that hon. Senators understand that there is a subtle distinction between cheap goods and dumped goods. Dumped goods and subsidized goods have clear definitions within the terms of this bill. The fact that goods are being sold cheaply or are of second, third or fourth quality being sold cheaply, does not really address in this sense. It means that the ministry will have to prove that the goods are being dumped at a market value in Trinidad and Tobago below either the cost of the importing country or below the market value which it is normally being sold at in the home country.

Clause 8 provides that where duty is payable, it is payable on the import of all such goods.

Clause 10 allows the importer to apply to the Minister for relief from duty and the Comptroller shall remit or repay that duty.

Clause 11 allows the Minister to provide for the allowance of draw back in respect of duties under this bill to be paid by the Comptroller.

Clause 14 empowers the Minister to determine the normal value and export price where, because of insufficient information, they cannot be ascertained in accordance with clauses 12 and 13.

Clause 15 contains a formula for identifying the country of origin. This is a key aspect of this legislation, Mr. President.

Part IV provides for investigations to be carried out regarding dumping and the giving of subsidies.

Clause 20 provides for the treatment of confidential information which is supplied in the course of an investigation.

Part V sets out the determinations which the Minister of Trade, Industry and Tourism may make following an investigation as set out under Part IV.

Part VI deals with appeals. It is important that the process of appeal be maintained in any piece of legislation.

Clause 27 enables persons aggrieved by an Order of the Minister imposing duty under the bill, to appeal to the Tax Appeal Board.

Part VII contains other miscellaneous provisions. Under Part VII, clause 29 provides that the Minister shall review the need for the continued imposition of duty; and clause 30 provides for the circumstances in which duty may be imposed retroactively.

Today, we have before us a bill which, in summary, provides another mechanism to safeguard some of our local manufacturers against imported goods which are either dumped or subsidized.

**Sen. Prof. Spence:** Mr. President, I wonder whether the hon. Minister before he closes would tell us something about the measures that would be taken in order to make it possible to collect the sort of information that one needs in order to determine that goods are being dumped, the sort of staffing—the whole machinery, because therein lies the real crux of whether it is going to be effective. Clearly, it is a very big job.

**Hon. B. Kuei Tung:** Mr. President, I thank the hon. Senator. I would want to indicate at a later stage that the anti-dumping authority has to be properly staffed in Trinidad and Tobago, within the ministry. I accept that a certain level of skills is needed to ensure that the investigations can be carried out effectively.

But I will also inform this honourable Senate that in the not too distant future my ministry is going to undertake a study to determine the most feasible means of setting up trade missions in foreign countries which, ultimately, are going to be key to providing information with respect to dumped and subsidized goods.

So there is going to be collaboration between missions that are set up. In cases where we do not have missions, we would use either our own missions in terms of the Ministry of Foreign Affairs, or we would use experts. I am sure we recognize that we can get legal, accounting and other expertise, in home countries, even where goods are being exported to us, and we can use this expertise, together with public information—and by public information, I am sure the hon. Senator is aware that the United Nations, UNCTAD, for argument's sake, puts out publications which is common public knowledge, with respect to goods that are subsidized by governments and even the US government has not been able to escape UNCTAD's publications. So that there is a great deal of information which is available, both foreign and local, which, if married, can clearly set out a case as to whether goods have been dumped or subsidized.

As I was about to say, firstly, this piece of legislation clearly illustrates that the old piece of legislation which sat on our books had really become obsolete, not so much because it had predated the GATT anti-dumping code, but because, with the removal of the Negative List, proper legislation became all the more critical. Secondly, it illustrates that the bill is aggressive enough to contemplate the need for an anti-dumping authority which will eventually be fully staffed as soon as the bill is properly passed.

*Question proposed.*

**Sen. Wade Mark:** Mr. President, in my opening I want to refer to a statement made by Dr. Kari Levitt in a very important address delivered at the Eric Williams Memorial Lecture Series at the Central Bank some time in 1980. It is contained in *Caribbean Affairs*, and the lecture is entitled “Debt Adjustment and Development: Looking into the 1990s”. On page 44 under the title, “What are we ‘adjusting’ to?”, she states:

“It seems that we are being programmed to adjust to the fact that the ‘rules of the game’ have changed. The old order has passed; the old engines of growth of peripheral economies are obsolete; and the new ones offered in the form of ‘outward-looking development’ will, if we are not careful, pull us back to the status of export/import economies, but this time around with no external investment and no strong markets.”

Even in the hon. Minister’s presentation, one gets the impression that the Government itself does not have a serious conviction or commitment to what is being proposed here today. What we are witnessing today is a major transformation of the international economic order, because this anti-dumping piece of legislation has to be placed in some perspective. We are faced with a major transformation process internationally. The challenge which this transformation presents is both daunting and disturbing to many developing countries, in general, and the Caribbean, in particular.

There is an alarming poverty of ideas and ideals in the world today. The present crop of PNM politicians are without a mission or vision. They are merely drifting with the present economic currents created by the international financial institutions, as admitted by the hon. Minister; he is just implementing what was left behind by the last regime.

At the end of 1988 some 59 countries were in receipt of structural adjustment loans from the World Bank, and these loans were only made possible within the framework of an IMF programme. The Anti-Dumping and Countervailing Duties Bill, 1992, has to be seen in the context of what is taking place in the world where, for instance, many developing countries, including Trinidad and Tobago, are virtually in receivership to these international financial lending agencies.

We had before this bill, as was indicated by the hon. Minister, an Act entitled, the Customs Duties Dumping and Subsidies Act, Chap. 78:04 of 1958, which

was never enforced. So we are coming with a new piece of legislation to replace that old one, and the old one was never enforced, because the regulations which were necessary to give that piece of legislation some power was never, in fact, adhered to.

We are in a situation today, in which the Government of Trinidad and Tobago, faced with a mountain of foreign debt, like so many developing countries, have been literally forced to drink the medicine of these institutions, and the Anti-dumping and Countervailing Duties Bill has to be seen in the context of this development.

We have to understand—and I think the Minister sought to put it into some perspective for us—that things are not happening by magic. Things, like the anti-dumping legislation, are not happening because the PNM says that we must have an anti-dumping law so that development can take place, so that the economy can be freed up, so that safety and protection can be provided for the businessman of the country.

There is a report entitled A Report and Recommendation of the President of the World Bank for Reconstruction and Development to the executive directors on a proposed structural adjustment loan in the amount of US \$40 million to the Republic of Trinidad and Tobago. I want to submit that this report forms the partial basis of what we are dealing with today.

If you look at this report carefully, what you would see is the outlining of certain policy measures of the World Bank as to steps that should be taken by Trinidad and Tobago to put its economy on what they consider to be a proper footing.

You would recall that some time ago we were told that a number of state enterprises have to go, including our urea plant and our Fertrin plant. We also had a restructuring of Solid Waste Management, in which 28 workers were retrenched.

All these things are instructions in this particular report, where, for instance, they tell the Government of Trinidad and Tobago that by the end of this year—before they can draw down on the second tranche of US \$40 million—they have to privatize or sell out three state enterprises, and the Government are busily going about the place doing just that. They also told the last Government and this one that they have to restructure and rationalize Solid Waste, and Solid Waste is being restructured and rationalized.



What I am saying is that a number of things that are taking place in Trinidad and Tobago today are not taking place because the Government of this country really wants these things to happen. They are taking place in a context—and this is where this anti-dumping legislation has to be put into some perspective, because there are, in fact, grounds to conclude that the Government of this country are virtually in receivership, and the international agencies are in complete charge of this country.

This report indicates everything that the Minister outlined and I want to indicate to you some other things, because we cannot talk about anti-dumping legislation or countervailing duties without looking at the context in which this legislation is being brought to Parliament.

It was as a result of this loan arrangement that the Government were forced to abolish the Negative List and impose import surcharges, in some instances 100 per cent, in other instances, involving textiles, 125 per cent. But that is only for about three to four years and by 1994/1995, they are supposed to reduce it to the level of the common external tariff, which is 45 per cent, and from all indications it might crash to 20, if Jamaica has its way.

We are looking at a situation in which these impositions are being made and what is even sad is that these things are taking place in Trinidad and Tobago today, without the necessary safeguards; that is the problem. The Minister of Finance tells the country that the argument involving trade liberalization is over, we should not engage in that, because it is happening all over the world. So, because it is happening all over the world, we have to be involved in it. That is the thinking of the Government.

Under the World Bank arrangement, we are supposed to strengthen our tariff and customs administration and to introduce anti-dumping arrangements. They tell us that we have to do these things. They are also supposed to introduce a system of duty-free concession arrangement in which manufacturers used to enjoy concessions. That is to go within three to five years. The World Bank also indicated to us that we have to privatize not only the public utilities, but also a number of our state enterprises.

There is another institution which is equally vicious, called the Inter-American Development Bank and that is telling us that we also have to privatize and rationalize the petroleum sector of our economy.

So when the Minister said in his statement earlier that he is seeking to establish a level playing field, how can there be a level playing field in an unequal world, where you have unequal markets and strengths? This piece of legislation is supposed to lay the basis to establish a level playing field—an American term again. Some Americans say, “well, look, level playing field”, and we say level playing field, too. We do not understand the meaning of it, but we simply repeat it. I guess this is independence, Trinidad and Tobago style.

What I am arguing here is that this anti-dumping piece of legislation before this Parliament was supposed to come here long before the abolition of the Negative List, on June 30. The Government were supposed to restructure the Customs and Excise Department because it is that department in the final analysis that is going to police this piece of legislation. We had a frightening piece on TV-6 last night, which I will relay later on, in terms of the state of the Customs Department in Trinidad and Tobago today.

The Government cannot be serious. The horse has already bolted and we are now closing the stable. What is ironic about this whole thing is that we are supposed to also reinforce the Food and Drugs Division and as the Minister mentioned, the Bureau of Standards, so that we may ensure standards of quality, labelling, *et cetera*.

We are supposed also to establish what is called a Revenue Protection Agency, so that unlike Jamaica, we would not have close to \$700 million being fleeced. Because the Government are freeing up the market and what they are allowing is a department that is going to be almost like the nerve centre of this country, after the petroleum sector, not properly equipped. And the kind of corruption that can take place in that department is amazing.

In Jamaica, it is game down there in terms of commissions to customs officers and the government of Jamaica, over a period of two years, lost close to \$700 million in revenue, because of corruption at that level.

We have abolished the Negative List and we have not put in place the necessary safeguards to ensure that the integrity of this economy is protected. But this is the Government of this country. This is the Government of Prime Minister Manning who has moved from Jack to king. This is a government that is based on superstition, where a Minister comes in the dead of night to change one thing, to put another thing and that has blighted the country even more.

I want to refer to a statement, in all seriousness. This statement was made at a special general meeting called by the Trinidad and Tobago Manufacturers' Association. The president of this association is one Mr. Neil Poon Tip, and I want to quote him. This was stated on July 8, 1992:

“In this connection, the following needs to be reviewed in terms of adequacy and timing of implementation:

- (i) Restructure customs and excise, including implementation of systems and training of personnel;
- (ii) The re-enforcement of the Food and Drugs Department and the Bureau of Standards with a view to ensuring standards of quality, labelling, *et cetera*; and
- (iii) To enact legislation dealing with anti-dumping an unfair trade practices.

It is sad to say, whilst the Committee is actively working on these matters, the bottom line is that the Negative List has been removed without implementation of any of the above.”

In other words, the Trinidad and Tobago Manufacturers' Association are saying that a number of things were required to be done, but as at July 8, none of these things had been done.

#### **2.40 p.m.**

The hon. Prime Minister of this country in a statement to the same Trinidad and Tobago Manufacturers' Association, on March 26, 1992, indicated, and I want to quote here, because we seem to have double standards involving this exercise to travel a new course.

We are seeking to travel a new course, and we are not putting in place, the kind of measures, to ensure that our economy survives. In a statement coming from the Ministry of Information, dated March 26, in an address to the Trinidad and Tobago Manufacturers' Association, on March 18, the Prime Minister said:

"Measures identified for implementation, prior to the complete dismantling of the negative list, such as the upgrading of the Customs and Excise Division, the Food and Drug Division and the Bureau of Standards are well on the way.”

The Prime Minister was saying, in March, that these things were “on the way”. Today, the Minister is saying that those things are still “on the way”. This was said on March 18, and we have to hold the Prime Minister to his word.

We are supposed to update that department to make sure that this anti-dumping and countervailing duties legislation works properly. That is also “on the way”, I would imagine. It is not completed, but, goods are coming in. If you look at the grocery shelves, you would see imported items. Goods are flooding the country.

The point I am making is that one gets the impression that pressures are being brought to bear on the Government, as if the Government have to get that US \$40 million, by hook or by crook, before the budget, or before December, and they have to do everything—even if they know what they are doing is not in the best interest of Trinidad and Tobago. They know it. You can tell from the Minister's presentation. He is speaking without any conviction, because he is a prisoner.

We are in a situation in which the list has been abolished and nothing has been put in place to protect the local manufacturers who face extinction, based on Mr. Poon Tip's own statement, if the Government is so unwise as to go along with a reduction in the CET, as proposed by Jamaica, from 45 to 20 per cent.

I believe that this trade liberalization programme of the Government, which is imposed by the World Bank, is going to result in this country becoming a virtual dumping-ground, legislation or no legislation. There are two countries in the world that seriously invoke measures against developing countries—developing countries do not invoke against them, they invoke against developing countries—they are the United States of America and Germany.

Anti-dumping business is a serious, complex, and costly thing; it is a time-consuming exercise. Trinidad and Tobago will become a dumping ground. The hon. Minister, has given himself all the authority—as if he is Almighty God—he has appointed and anointed himself everything. In Trinidad and Tobago, we have to ensure that the leverage for corrupt activity is reduced. When the Minister arrogates unto himself all that authority, there is a possibility that you can have problems. So, goods are going to come in here, Act or no Act. As far as I am concerned, this is a formality that we are going through because the Government is not serious.

If you look at this Anti-dumping and Countervailing Duties legislation, an Authority is established. We are not too clear, under this particular section that deals with the Authority, who are the people that are going to make up the Authority. All we hear from the wise hon. Minister is that he may designate the Permanent Secretary in his ministry or such other person as he thinks fit, to be the Anti-dumping Authority, for the purposes of this bill.

So, the Minister could designate anyone. We are the Senate, we are to give approval to a piece of legislation and we do not know who are the people who will comprise this Anti-dumping Authority. It cannot be one person. What is the role of the Customs and Excise Department in this whole arrangement? We do not know. We are shooting in the dark.

They come to this Senate and say they want to establish an Anti-dumping Authority, a very serious piece of legislation to protect and safeguard our industry from material injury. Yet, there are no measures in the bill to guide us as to who these people are going to be. I guess, this is how a caring Government operates. The PNM cares, but this is certainly a careless piece of legislation.

I am saying that when it comes to the issue of customs, we need to know who these people are. The Minister must tell us. We also want to know what is the role of the Customs and Excise Department in this whole arrangement.

Mr. President, as I am talking about the Customs and Excise Department, I want to let you know—from the information we are in receipt of—that Department is woefully understaffed. There was a news item on TV6 last night, I happened to be home, and I was lucky to see it. *[Interruption]* I am a very busy man, at all times. I am always on the move. The Minister must verify this thing, and indicate to us, whether he is satisfied that the Customs and Excise Department at this time is adequately up to the task of dealing with this serious piece of legislation that is before this Parliament.

We understand that there are on the staff of that Department, some 462 customs officers, but, at present, only 339, apparently, are employed; there is a shortage. What is even more serious is that the Customs and Excise Department is so woefully short-staffed that customs officers have to go to the premises of businessmen to make their checks. There was this particular businessman, laughing in a very unusual manner, indicating that once a customs officer comes, and he makes whatever he has to make—in terms of arrangements—then everything is okay. He was indicating to the entire country, last night, that there is widespread corruption at the level of the Customs and Excise Department. In fact, some of the Chief Preventative Officers, I think, were indicating that there are, in fact, allegations of widespread corruption.

**2.50 p.m.**

How are we going to police the Customs Department? How are we going to ensure that this country is not robbed of vital revenues? The Minister himself admitted some time ago that seven out of every ten invoices are understated. I am not against businessmen. I am against unscrupulous businessmen. The Minister must also tell us when he has some time, how much money that is when translated. It could be hundreds of millions of dollars that Trinidad and Tobago is losing as a result of the looseness and the flippant approach to the Administration of that place they call the Customs Department, and that is going to be the nerve centre, as far as this piece of legislation is concerned.

Are there going to be specialists on this Anti-dumping tribunal? What about the training? This is a new experience for the Customs Department where the list that we had for so many years, valued at over—you know we had about 412 commodities that were protected under the Negative List, most of them gone. The value of that could be about \$2 billion. Who will take that? Who is going to rush to take that market?

Therefore, the question of training is important. We did not get that from the Minister today in terms of what is involved or what he is doing. I believe that the Minister is investing himself with too much power, too much authority. Throughout the bill, the Minister—he is in charge of everything. He appoints people to investigate and the same people have to report to him when they are making their recommendations, and then he determines whether something will or will not be imposed. I do not think the Minister should be involved in all that kind of thing. He should put that in the hands of some independent tribunal. Of course, he is the man in charge, overall. Why is he giving himself all that responsibility? Next thing you know, people will charge him for corrupt activities. I am saying it could be done; I am not saying that he is corrupt. I know that PNM is a caring Government.

I am saying that when we are talking about anti-dumping, we have to be very careful—what sort of mechanism we have established to ensure that people who are over-invoicing and under-invoicing could be kept in check. We have had, rather, capital flight amounting close to about \$8 billion to \$10 billion over the last 10 years, and the Central Bank cannot deal with it.

I read a report recently in *Fortune* magazine where for 1990 moneys coming from the Caribbean frittered away from the region and going to North America,

amounted to \$23 billion. When an analysis was made further, as to what percentage of that came from Trinidad and Tobago, close to 90 per cent of that amount came from this country. Well, I do not know if drugs are involved here, but it is a large amount of money that is leaving this country and we are talking about the mechanisms. We on this side are not convinced that the Government have established the kind of mechanisms to ensure that our revenue base is protected, particularly when the Government are going about the place privatizing, demonopolizing, doing everything they can.

**Sen. A. Mark:** Will the Senator, give us the reference of that *Fortune* magazine? I think that article will be very interesting reading.

**Sen. W. Mark:** I think it is April, 1991. I am sorry I do not have it here, Mr. President. *[Interruption]* I always reserve tea for him in terms of discussion. He knows this. He disturbs me continually. To ensure that this system works properly, information is required. How are we going to get this information to ensure that people from Europe, North America and Japan are not dumping or are not subsidizing? How are we going to impose countervailing duties? How are we going to get the information? There will be no prosecution.

I guarantee you that Trinidad and Tobago will not be able to challenge America. We would not be able to do it. All they have to do is to pick up a phone and tell the Minister, “fix up” and he has to do that, because you are dealing with power relations here. I am saying, from what we are seeing here, that we are not convinced that the kind of safeguards that are needed to ensure that we protect our integrity as an economy, are in place.

We believe that from the information we have, the Customs Department is going to play a very important role in this Anti-dumping Authority, and we feel that it is necessary for the Minister to clean up that department and ensure that when this thing comes on stream—it is very unfortunate that Trinidad and Tobago could allow itself to be hoodwinked and conned in the way that we have allowed ourselves, where all these things are taking place after the event, after the fact. What about the “Buy-local” campaign, Sir? The Caribbean region, Trinidad and Tobago, included—our taste buds and tastes have been virtually surrendered to foreign goods and services.

If the manufacturing class in this country is to survive, those genuine manufacturers—I am not talking about paper manufacturers and so forth; I am not talking about manufacturers who import ketchup, put it in a bottle and put a

label on it and say, "Made in Trinidad and Tobago." They are jokey manufacturers. I am concerned about genuine manufacturers who are making a genuine effort to build Trinidad and Tobago. How are we going to ensure protection for them?

We do not even have a "buy local" campaign. In fact, most of the television stations today are more Americanized in their programming than ever before. We now have cable TV, 18 stations. The question I am asking, How are we going to ensure that our community, our society and our economy, survive? How are we going to ensure this? I am not getting that kind of vibration from the PNM Government or the Minister.

**3.00 p.m.**

Dumping, the problem that we have is that this thing is going to result in a massive dislocation of employment. This is the danger inherent in this legislation if it is not properly monitored, because you have people using Caricom countries to dump goods in Trinidad and Tobago. And now that you have abolished the Negative List, extra-regional forces are going to take whatever advantages they can in order to dump goods into Trinidad and Tobago. When goods are dumped into the country, local manufacturers who are assembling goods will go out of business. The manufacturing sector already boasted that they employ about 40,000 people. That is a fact.

I have an advertisement which is for a frost-free Gold Star fridge which comes from Antigua—and according to the ad, being made by an Antiguan manufacturer. But the fridges are really coming from South Korea. They are labelled, "Made in Antigua". Those fridges are being sold at less than the price of the fridges which are being produced by Consol. Consol are the manufacturing firm in the country which assemble fridges. They have written to the Minister. That is the sad thing about it.

The Minister is aware of this. The company in question recently wrote to the Transport and Industrial Workers Union indicating that they would probably have to revise their whole programme, because they do not know if they will be in business by the end of this year. A letter dated July 14 is addressed to the Minister. We still have those fridges being sold on the local market.



One of the dangers of trade liberalization is the massive dislocation the unemployment that it will cause. Tens of thousands of workers could lose their jobs if this economy is not protected properly. The Government are not serious about protecting the jobs of people.

There is another letter dated July, 3 which is addressed to the same union, Transport and Industrial Workers Union, which comes from Ceramic Trinidad Limited. They are supposed to enter into a new collective agreement for the period April 1, 1992 to March 31, 1995. Because of the number of tiles which are coming from abroad, they are now telling the union, "Let us meet in March of 1993 and when we meet, we shall determine whether we shall continue business". It is trade liberalization which is causing that.

We are not protecting our market, but the industrialized countries are protecting theirs. You will not be surprised if you hear by next year August, close to 5,000 workers are retrenched, because the companies are closed down. It has started. The restructure at Solid Waste, 28 persons have gone; the Medical Sciences Complex, over 50 have gone.

Then, BWIA have said that by Friday they will send home 200 because they are now rightsizing. That is a new term in terms of dismissal of workers. I hope they do not get wrong side. This place will get wrong-sided if we continue to allow these things to take place without understanding the consequences for the stability of this country.

Anti-dumping legislation or not, if we continue to allow workers to be retrenched and where you have over 150,000 persons unemployed in this country, at the rate that it has started I do not know if the PNM would survive.

**Sen. Dr. Kuarsingh:** Let not your heart be troubled.

**Sen. W. Mark:** My heart is always strong, never troubled.

I am saying that we are not happy. We believe that this legislation is useless. We do not believe it is going to provide the kind of help and protection that are necessary. I am saying that already there is evidence of this taking place.

The manufacturers have been calling for an omnibus piece of legislation which is going to be all-embracing. We must take a leaf from America's book; in spite of our problems, we must learn from them. I am not saying no. I have a copy of the omnibus Trade and Competitiveness Act of 1988. It is a comprehensive piece of legislation. The Americans do not make joke when it comes to their

*Anti-Dumping and Countervailing Duties Bill*  
[SEN. W. MARK]

*Tuesday, August 11, 1992*

industry. They do not compromise on protection for their industry. This is a very powerful weapon against Third World and developing countries' exports. I will reveal to you later on what is taking place in terms of this.

In this Act a wide spectrum of activities which include anti-dumping and countervailing is covered. The hon. Minister says to us that he is coming with an Unfair Trade Practices Bill, but he did not say when. What he said is that he has to get experts. The present Government is just like the last one. They always rely on experts. You know what experts did to the last one. You must learn from the past. It is said that those people who fail to learn from their mistakes are doomed to repeat them. You must learn.

This Act is a comprehensive piece of legislation. We are arguing on this side that in a situation where we are supposed to have a customs union in the region by 1994—95, where we should be harmonizing our commercial policies, there is need—instead of having bits and pieces of anti-dumping legislation in different parts of the region—to have one regional Anti-dumping and Countervailing Duties Act so that we could act together, as a whole.

**Mr. President:** You seem to have a lot more to say as an advocate for the Manufacturers Association than the trade union.

The speaking time of the hon. Senator has expired.

*Motion made,* That the Senator's speaking time be extended by 15 minutes.  
[*Sen. S. Capildeo*]

*Question put and agreed to.*

**Sen. W. Mark:** I am saying that we should really be taking—

**Sen. Dr. Kuarsingh:** I should like to ask my colleague what their policy is as the incumbent UNC Government in 1996.

**Sen. W. Mark:** Thank you for that entry into power in 1996. Our responsibility is not to let you know that at this moment. We do not have that responsibility.

If I could just proceed. What I am simply saying is that we need to have a more regional approach to this question of anti-dumping. The reason why I am emphasizing this point is that in October the Heads of Government are supposed to meet in this country and a decision will be taken on whether to reduce the

common external tariff. A more regional approach to this issue would be in the interest of the Caribbean people. I think that would be the better approach on this matter.

**3.10 p.m.**

There is a document called a *Human Development Report*, 1992 and on page 66, this report points out that:

"Developing Countries suffer major losses because they are denied market opportunities. These losses arise in two ways: First, even where markets work freely, the poor countries participate as unequal partners, and, secondly, where developing nations might have a competitive advantage, the markets are often restricted.

Overall, the cost of global markets to developing countries, at the end of 1990, was estimated at \$500 billion."

So, we are doing everything to free up our economy—to liberalize—and the industrialized countries are putting every obstacle in our path, to the point that in 1990 the developing world suffered. It cost them close to \$500 billion, as a result of obstacles put in their path by the rich developed countries.

There is a section here that deals with the income gap. The income disparity between the rich and the poor countries—the developed and the developing world—is shattering and nerve-racking. On page 34 it says:

"Between 1960 and 1989, the countries with the richest 20 per cent of the world population increased their share of global GNP from 70.2 per cent to 82.7 per cent, and the countries with the poorest 20 per cent of the world's population, saw their share fall from 2.3 to 1.4 per cent."

That is the reality that we are faced with here today. I am saying that the path the PNM is taking us down at this point will result in precisely one where you would see people driving \$.5 million vehicles, while others would still be rummaging in, and eating out of, garbage bins. In spite of what the Prime Minister might want to say, the reality is that the economic policy that the Government are pursuing is resulting in the widening of the gap between the rich and the poor, the haves and the have-nots. That is what is taking place.

I want the Minister to indicate, in winding up, whether Trinidad and Tobago is a signatory to the Anti-dumping Code. I think he needs to clear the air on that matter because the Anti-dumping Code is very clear. It is a GATT document.

I want to indicate that the use of anti-dumping and countervailing duties against competitive imports by industrialized countries is having a negative effect on world trade involving developing countries. The number of cases initiated against developing countries increased. Between 1980 and 1984, the number of cases targetted against developing countries, as a proportion of total cases, was in the 18—38 per cent range; between 1985—1988, it went up to the 45—53 per cent range. In other words, what is taking place is that as developing countries try their best to become competitive, more countervailing duties are being put in their paths, and the evidence is clear that is what is taking place in the world today.

Whilst the Government has brought this piece of legislation to Parliament to ensure that we have some degree of protection, the reality is that the Government is not going to be in a position to properly police our ports and our major points of outlets. We believe that the corruption will continue; that in two years' time, or maybe less, you will get Kellogg's cornflakes being sold in this country for less than the price of Sunshine cornflakes. That is what is going to happen. When you free up your economy, you must put into place protective mechanisms and, simultaneously, pursue an aggressive industrial policy. We are always talking about the Asian Tigers—Japan and Korea—In all those countries the state plays, and continues to play, an active interventionist role in the development of their economies. Trinidad and Tobago is being told that the state must now disappear; that is what the IMF, the IADB and the World Bank are now telling us. So how can we develop?

If we are serious about development and we are talking about alternatives, whilst we are dealing with anti-dumping legislation we have to have some kind of industrial policy. What is the industrial policy of the Government? To sell out our enterprises? To go to the highest bidder in New York and see who will buy our urea and Fertrin plants and demonopolize our public utilities and sell out, for example, our petroleum sector? Is that an industrial policy? I am saying that if we are serious about development, we have to target certain priority sectors, and we must use, what I call, a number of macro-policy instruments to ensure the success of those sectors, which would include monetary policy, fiscal policy, commercial policy, exchange rate policy and a technology policy.

The Minister in charge of the environment is well aware of the role and importance of technology. But what kind of research is taking place in this country? The manufacturing sector has a heavy blame to carry for the state it is in today; there is no doubt about that. Because if these men were upgrading and properly preparing themselves for the 21st century, we would have been technologically much more advanced. There are manufacturers in this country who are literally fleecing our country's foreign exchange by just importing things, putting them together, putting a label on them saying, "Made in Trinidad and Tobago". We cannot be serious. I am saying that they have to face reality, but at the same time there must be some cover of these manufacturers because they do play an important role in our economy, and they do provide a number of important jobs for our citizens.

I know that this particular bill that we are discussing is a money bill. We wanted to make a number of amendments but we do not have the authority in this Senate. All we can do is to urge the hon. Minister of Trade, Industry and Tourism to work assiduously to ensure that the mechanisms that are supposed to be in place, are put in place rapidly. We are already behind time. We, as a party and as the alternative government, do not support this wholesale and rampant approach to liberalization. The name of the game in the world today is "market access". People are seeking to access your markets and they do not want you in return to access theirs. We have people who are supposed to be intelligent, caring, and who are supposed to be focussing on the 21st century, and it seems to us that, somehow they are not really understanding their responsibility to this nation.

**3.20 p.m.**

As the Ryan poll indicated—and I want to conclude on this point. The "King" is in check; that is clear; it has no space; it cannot move. Secondly, with all the so-called confidence from Jack to political king, the reality is, that almost the entire population has no confidence either in the political or economic future of this country. It is a damning indictment against the economic policies of the Government. They have not been able to instil any confidence in the population, so that between 92 and 96 per cent of the people say that they do not have any confidence in the economic and political future of this country.

It is an indictment against this regime. I really feel that if the Government are serious in trying to salvage and bring about some degree of salvation for themselves and the country, they must begin to listen some more; they must begin to work more harmoniously and co-operatively with, not only us, but also the

entire country, so that when policy measures are being formulated, the inputs of the various forces, sectional interests can, in fact, be put into the pot.

Mr President, thank you very much.

**Sen. Michael Mansoor:** Mr President, I should, first of all, like to start off by congratulating the Minister of Trade, Industry and Tourism for bringing this Anti-dumping and Countervailing Duties Bill here today. As you well know, Mr President, it is long overdue. It spans administrations, and one must recognize that getting the bill here after six months, is possibly an achievement. However, we cannot but be concerned about the fact that we have been very lethargic in terms of placing in our law, a complete set of legislation that would deal with unfair trade practices and all the other kinds of difficulties that would become obvious in the present-day world of trade.

It seems very clear that the major issues of the next decade will not be so much military issues—or the issues of political power, one against the other; the real battle being fought in the world today is the battle of trade—economic power. So that when we set about carving for ourselves a regime to do with trade, we are embarking on one of the most important legislative and economic functions that this Parliament can undertake.

So, I congratulate the Minister for bringing the bill. I, however, want to extract from him, if I could, in the course of this debate, a timetable for the other pieces of legislation that are necessary if we are going to be able to foster our manufacturing sector and, at the same time, afford the level of consumer protection that is consistent with good economic policy.

I should like, also, to register a few concerns that I have about this bill. The first has to do with the absolute concentration of power, with respect to anti-dumping and countervailing duties, in the hands of the Minister and the Authority. I am concerned about that. I am also concerned about the fact that there seems to be a philosophical predisposition in this bill to protect the importer and the predator/exporter into Trinidad and Tobago, as opposed to the manufacturer in Trinidad and Tobago. So many parts of this bill seem to give the importer and the foreign exporter rights, which the manufacturer does not seem to have. So there seems to be this underlying current that protects imports, while we do not seem to be giving the same amount of protection and courses of redress to the local manufacturer.

The third concern I have is the fact that this legislation seems to be brought here today in order to satisfy a requirement that we must do something with respect to anti-dumping and countervailing duties. It seems to me that the legislation is being hurried. I saw this bill only a week ago and it is a very complex piece of legislation, and one gets the impression that the Government are taking the position, "Well, let us bring a bill that will become an Act, so that we can say that we have anti-dumping legislation". It strikes me that very little time and effort have been given to looking at exactly how the thing is going to work.

I fear that because of this attitude what will happen is that we shall place on the law books another piece of legislation, which will just not get implemented. This will in many ways, facilitate doing nothing in terms of dealing with dumping into Trinidad and Tobago

One gets the impression that the underlying premise of the bill is that the Government are going to exercise some kind of *post-facto* type of control over goods that have been already dumped. It is not proactive, and while I listened with much interest to what the Minister had to say about reforming Customs or bringing unfair trade practice legislation and new consumer protection legislation, I fear that this bill is going to be made part of the laws of Trinidad and Tobago, and we shall not hear very much about whether goods have been dumped and what has been done about it.

I should like to ask the Minister whether he has attempted to forecast the number of cases, investigations that this Authority will conduct over the next few years, and if he has done so, what provisions he has made in terms of the staff, and expertise that will be needed.

I fear once again that this legislative exercise will end up as other legislative exercises have ended up and I think back to all the work that was done in the early 1980s with respect to the conveyancing of land conveyancing practice. The bill was not proclaimed, to the best of my knowledge, because we do not have the staff.

It would, indeed, be a dreadful pity if after all of this, nothing really happens and manufacturers continue to be materially injured because our customs apparatus is not capable of dealing with the new strategy that will be devised on a daily basis to get around the high tariff barriers that we have sought to put in place of the Negative List. Mr. President, those are my fears.

**3.30 p.m.**

I shall now deal with some aspects of the detailed legislation which I consider to be important, notwithstanding, as I have said, the apparent position of the government to put the legislation on the books and see what happens afterwards.

I accept that this legislation is part of the GATT Code. I do not know which code it is, but it seems from what the Minister says that it is in conformity with the GATT Code—I take it that it is the current one—and also that the legislation has been modelled in some way on the laws of Canada and Australia. So that gives one a certain measure of assurance that, maybe, we are not being led down the garden path and that there is a precedent for this bill somewhere. However, in the limited time available to Senators, I do not think that anyone could have researched that.

I want to deal with my major concern and this is the question of the power in the hands of the Minister. This power comes from the essential definition of dumping. What is dumping? When do countervailing duties apply? Both in the definition clause and in clauses 5 and 6, it is very clear that anti-dumping and countervailing duties will be levied only when the Minister or the Authority determines that material injury has been done or is being threatened to an industry. It has nothing to do with absolute rates, it has nothing to do with the absolute level of export prices or normal prices. The essential determination is that material injury is being done to an industry.

When I saw that, I had to ask the question: What is material injury? The bill does not tell us very much because what it essentially says is that material injury is material injury. It does not lay out the criteria or specifics that would cause the Minister or the Authority to determine that material injury is being done, has been done or is being threatened. So I ask the question: Is material injury going to happen when 2,000 people are retrenched? Is material injury going to happen when a company has been put into receivership? Is material injury going to happen when a company is less profitable than the year before?

What makes anyone believe that the Minister and his Authority would make those determinations in accordance with acceptable criteria? The essential nexus of the legislation, this concept of material injury has not been defined, except that in clause 34 of the bill, we are told that, as usual, regulations will be made by the Minister.



I want to suggest that if we do not know what material injury is today, how could we, in all good conscience, give assent to this legislation? The determination is, essentially, a subjective one. One would have said—if it were difficult to define material injury—one could, perhaps, derive some solace if there was some sort of tribunal, body or authority in which one could have confidence. But when one looks at who is going to determine material injury, one comes to the conclusion that it is either the Authority, which is a person—maybe the Permanent Secretary in the Ministry of Trade—or, indeed, the Minister.

I have a very serious reservation on that because no Minister, no Authority can decide, according to the proposed law, to levy these duties if material injury has not been done, and we really do not know what material injury is. Of more concern, there is very little in this bill to tell us what sort of balance there will be in the determination of material injury by the Minister or his Authority. It is a fundamental concern.

The power of the Minister goes beyond the question of material injury, however that is defined, whatever it means. The Minister can decide that an investigation which has been done in accordance with the normal procedure under which the Authority will work, should be terminated. Why? Because the Minister believes that insufficient evidence has been brought or—of more fundamental concern—because the Minister has received an undertaking from an importer or a foreign country that all will be well in the future.

That is a matter of very serious concern. A Minister, on the basis of an undertaking from an importer, can decide, all is well with respect to the past. It does not matter, presumably, whether you have destroyed 10 companies and 1,000 jobs in the process; on the basis of an undertaking only the Minister can decide the matter is over and “please be a good boy, do not do it again and all will be well”.

I wish to draw the attention of the Minister specifically to clause 28, which lays out this business of undertakings. It says very specifically that:

“... the Minister may cause the investigation to be suspended or terminated if he is given and accepts an undertaking by the Government of the country of export or by the exporter of the goods that the Government or the exporter, as the case may be, will so conduct future export trade to Trinidad and Tobago of like goods to the goods in the consignment as to avoid causing or threatening material injury...”

Essentially, what we are saying is that the Minister can get an undertaking that all will be well. This aspect of *post facto* review is also evident in clause 30 of the bill, where it is made very clear that:

“Duty and provisional duty shall only be applied to goods which are entered for home consumption after the date of an Order...”

So that if an importer has brought into Trinidad and Tobago consumption for a year—which in a small population of a million people is not all that difficult—a volume of goods that could destroy a manufacturer, all the Minister can do is to levy duties with respect to goods which are entered for home consumption after the date of the Order.

I hasten to draw attention to clause 30(3), which says that the Minister can retrospectively impose duties if he believes that the material injury has already been done. But then, again, there is a very severe limitation that this duty can only be imposed if not more than 90 days have passed since he accepted the undertaking or at the time he made his provisional Order.

The Minister, who had to decide material injury, is very circumscribed in this legislation. He really cannot deal with what has happened and what may have given rise to the complaint in the first instance. He is dealing with the future, when industries may have already been destroyed. I ask the question: Is this the intention? Or is it just that we have accepted a precedent from another country which has all the other pieces of legislation that work?

Our problem in this country is not putting legislation on the books; our problem is getting it to work. We are into a situation where, it seems to me, that there are several loopholes which an importer or a foreign country could use to destroy an industry. It does not take very long to destroy a company. One bad year and it goes out of business, because there are bankers—and we know the existing economic wisdom is that we must have our interest rates as high as possible. That is the conventional wisdom, these days.

It does not take very much to push a company to the brink of receivership or liquidation. If we are going to accept a regime that says we will only levy anti-dumping duties for the future, or in very limited circumstances with respect to what has already been done, I think we are giving the Trinidad and Tobago manufacturer the short end of the stick.

I ask the Minister whether it is his Government’s intention to leave this discretion in the hands of the Minister. Also, whether it is his intention to accept

undertakings on the basis that they would not dump in the future. I want to know what is the Government's intention.

I now want to deal with the question of implementing and getting this thing to work. I draw attention to clause 12 of the bill which basically deals with the ascertainment of normal value. One could not get a more complicated piece of legislation in terms of determining what is normal value, and one must remember that the basic premise of the bill is that if the export price is significantly less than normal value, anti-dumping or countervailing duties should be levied. The question of the determination of normal value is generic to any implementation or enforcement of this legislation.

When we look at clause 12, without examples as to how this thing would work, one really is at a loss to decide what the legislation really means. Clause 12 sets out several formulas. It says, basically, the simple formula would be, having looked at the normal price in the exporting country, that normal price would have to be adjusted for all sorts of things. Then it says, if there is no normal price, one should then try to do a costing or build up of what the normal price should be. So that the Authority, that is the Permanent Secretary, with his staff, is being asked by this legislation to work out what is the cost of manufacture of the item in question.

Here we are, in Trinidad and Tobago, giving an Authority the responsibility to cost goods manufactured in a third country. I ask the question: Are we really going to be able to do that? When the foreign manufacturer, or the importer or foreign government comes to you and says, "our cost is 'X' as opposed to 'Y'" because of seasonal fluctuations, because of all sorts of reasons: volume discounts, scale of operations, all the other concerns which would impact on cost, I should like to know how this Authority, under-staffed, as it appears to be at present, is going to deal with the people who will be able to tell them what is the cost. What makes our Minister of Trade believe that we would be able to marshal all the arguments and command all the data that would be able to suggest that the normal price is "X" as opposed to "Y"?

Similarly, in the matter of countervailing duties, let us look at the complexity. We are saying that if a foreign government, either by a tax credit or foreign exchange policy or any other stratagem or mechanism, if that foreign country facilitates the manufacturer in reducing his costs, we would levy countervailing duties. I ask again the question: Are we really geared-up to do that type of work?

If we are not equipped to do it, I ask the question: Is the legislation going to be implemented? Or is it just going to be another piece of law that is there if we need it, in case of emergency, but no one is really policing anything?

Let us not underestimate the complexity of working these formulas and the complexity of these investigations—if we are going to have any—and I am of the view that we are not going to have too many. Mercifully, however, one gets the impression that the drafters of the legislation realized the complexity of the foregoing clauses and in clause 14 they say if the Minister does not have enough information he can make his own determination with respect to costs. So it is a clause of the bill which, basically, says, “if we cannot do it, the Minister can decide a price”. That is essentially what it means.

I come back to the inordinate amount of power that is concentrated in this Minister. I believe that he is an accountant, by trade. But I do not believe that he will have the time to do these computations. I ask the question: Is our hurry in bringing this particular piece of legislation justified by the fact that the other things which we can do, which are much easier—for example, we can have labelling laws that can be implemented. The Bureau of Standards has standards, but if you speak to the people there, they tell you that their hands are tied.

I spoke to one officer of the Bureau this morning and he said, “Well, we cannot seize any goods if they are not properly labelled”, and I said “why?” He said, “Well, it appears that the legislation has been changed and in order to do so, we need a warrant and it is very difficult to get a warrant in these circumstances”.

While I accept what the Minister said, that he will bring other pieces of legislation, I want to suggest to this honourable Senate that we have, perhaps, taken the most difficult path. We are making this bill law because there is an easy precedent to import into Trinidad and Tobago. But the other things that should be done, giving the Bureau of Standards teeth to deal with the vagaries and the malpractices that exist out there, remain undone, not only by this administration. And trade liberalization is not a surprise.

Here we are, at the end of this session, making this bill law, not apparently having done too much research as to how it is really going to work and whether it suits our peculiar circumstances. We have a law which we are not able to implement.

I said at the beginning that one of my concerns was this predisposition to protect and accept undertakings from importers and foreign governments. The

legislation seems very anxious to take care of the rights and the implied rights of the importer. So much so, that the importer has, under clause 27, the right to go to the Tax Appeal Board. A person aggrieved by an Order imposing duty, may go to the Tax Appeal Board. So, we are very anxious to protect the rights of the importer—let him go to the Tax Appeal Board.

I ask the question: What about the complainant who may have said, “I believe an investigation is necessary in these circumstances because my industry is being materially injured”? What right of recourse does he have if the Minister decides that he does not have enough evidence, or that the extent of injury is negligible? What right does the manufacturer have? Can he go to the Tax Appeal Board?

The Authority and the Minister seem to have *carte blanche* authority to decide he does not have enough evidence, it is a negligible matter, only one company has gone bankrupt—I do not know what the criteria are going to be—and terminate the investigation and move on. But what right does the complainant have to appeal the Authority’s decision?

I maintain that the rights of the importer are protected—he can go to the Tax Appeal Board—but the rights of the complainant, I have not seen any protection for that here. If he feels unfairly dealt with because of the fact that the investigation of his complaint has been aborted on the basis of undertakings from importers or foreign governments or other things, he has no recourse.

I come to another concern I have, and it has to do with the penalties. We are normally very good when we establish these pieces of legislation to put penalties. In recent years these penalties have become significant, which is good. I refer to clause 33 where it says, essentially, that if a body corporate has committed an offence—and the offence that is being contemplated is the offence of giving false information—if a company has been adjudged guilty of an offence of giving false information in an investigation, all the officers and all the directors of that company are going to be presumed guilty.

Now, I am not a member of the legal profession, but it seems to me that if this clause sets out to take away from rights of an individual—the right to be deemed innocent until he is proved guilty—I want to suggest that this is not merely a money bill; this is a bill that needs a special majority.

How can we slip into the legislation a presumption of guilt unless you can prove yourself innocent just like that? I suppose the government can do it and say

it is a money bill. Maybe, it would not matter to them at this stage because the emphasis and the focus are on getting the bill passed quickly. I want to suggest that if ever any director or any officer of any company is presumed guilty under this clause, what will happen is exactly what happened with the Maxi-Taxi Act. I understand, from the little I know about these important and esoteric matters, that one is presumed innocent. Presumption of guilt cannot be slipped into a money bill just like that. I would appreciate very much the Minister's comments on this aspect of the legislation.

Mr. President, I should, therefore, like to conclude my comments today, but before I do that, I must ask the Minister to dwell a little on clause 17 which is the constitution, if you will, of the Anti-dumping Authority—what it is supposed to do, and also the fact that at the end of the day the Authority is essentially under the thumb of the Minister and has to do what the Minister wants it to do; individual discretion. It says that the Authority will investigate, make recommendations and identify goods.

In clause 17(2) it says:

“The Authority shall conform, in the performance of his duties...”

being Permanent Secretary—

“...and exercise of its powers with any special or general directions given to him by the Minister.”

Essentially, the Minister is the man of action here. He determines whether there is material injury; he determines whether an investigation should be suspended; he determines whether we should accept the undertakings of foreign governments or importers, and there is, apparently, no check. So I ask the question: Why have an Authority at all? Why not say, the Minister?

I suggest that if it is that this legislation works in the countries from which it has been imported, it is probably because they have the administrative capacity to deal with these matters. I do not think we have that. We are putting into the hands of one person much authority with respect to extracting or not extracting duties, accepting or not accepting undertakings—and I have always maintained that bad legislation is legislation that gives one person unchecked power.

It has nothing to do with the incumbent, people who have been there before, people who might be there in the future. But when we allow a Minister this broad

sweep of power, with no regulations, with no checks and balances, and much money is involved, we are giving that Minister or ministry the power, leverage or opportunity to conduct affairs in a manner which would be inimical to the economic well-being of our country.

Mr. President, let me conclude by saying, once again, that I am pleased that this legislation has come here. I congratulate the Minister on doing this. I bemoan the fact that the other pieces of legislation, which are perhaps more important, have not been brought as yet, but I am prepared—

**Sen. Dr. Kuarsingh:** Would the Senator give way? Before he takes his seat—I am sorry to disturb him at this time—would he care to say, as a manufacturer himself, as a man in business, what mechanism he would suggest instead of the one in the bill?

**Sen. Mansoor:** Mr. President, I think the simple answer to this question is what the Minister, in fairness to him, outlined at the very beginning. The Minister, not only on this occasion but also on many occasions before, has said very clearly that the systems and the procedures at the Customs Department, however amorphous that is, have to be improved. The Minister has said that again and again.

The Minister has made it very clear—and I want to be fair to him—that they are bringing this bill but they know that they have to deal with consumer legislation and unfair trade practices and so on. So I do not think the Government are bereft of ideas as to what to do. My complaint is the Government, not only this one, but the previous, have not done what they know they should do. This is important business. It does not take a long time for an industry to be destroyed.

So I would suggest to the Senator, that his Minister knows what has to be done. What I should like to do is extract from the Minister an indication as to when these things will be done, not only the legislation, but when we will have, in place, the administrative capacity to do these things.

Is it the Government's intention to have this revenue protection agency, which apparently works wonders in Jamaica? I am sure that the Minister knows all about this, and I am sure the good Senator knows about it. It is not a question of knowing what to do, it is a question of doing it, implementing it. That is the difficulty. The blame is not at the Minister's door. Essentially, he has to work through a system and all the other problems that we know about.

To summarize, I am concerned about implementation, I am concerned about the haste with which this legislation is being passed. I am concerned about the absence of the other pieces in the plan in terms of dealing with trade reform and trade liberalization, and I really worry about the fact that the Minister can only tell us today that the Permanent Secretary is the Authority. I get the feeling that we are just putting the legislation on the books, with the idea that we would implement it at some time in the future, but there is no hard evidence of this.

**4.00 p.m.**

I want to suggest that it does not take a long time for a manufacturer to be destroyed, and we have to implement all the pieces in the plan. Let us not just import a Canadian or Australian precedent, a bill that is easy to put on the books because other people have done it, and it does not appear as if they have had too much difficulty with it. I want to extract an indication from the Minister as to when these things will be done and, perhaps, more importantly, an undertaking that his Government are seriously committed to trade reform in all its aspects; not just a matter of putting the odd bill into the laws of Trinidad and Tobago.

Mr. President, I conclude my remarks by asking the Minister once again, not to make the mistake of being so concerned with hastily putting this bill into law without concerning himself with the more important issue of whether it is going to work. Is the idea of a one-man Authority with a lot of staff really what we want in Trinidad and Tobago? Because once we enact the law, it is so much more difficult to change it afterwards.

I want to suggest to the good Minister, with all his good intentions, that the emphasis should be on implementation and dealing with the problem rather than, in a very hasty and perhaps a hurried fashion, putting on the statute book legislation which may have worked elsewhere.

Thank you.

**Sen. John Rahael:** Mr. President, I rise to support the Anti-dumping and Countervailing Duties Bill before us. I, too, should like to join Sen. Mansoor in congratulating the hon. Minister, on bringing forward this bill, in the short time that he has assumed the duties of Minister of Trade, Industry and Tourism.

This bill is only one of the measures that the Government are taking now with respect to trade reform. I have already said in this honourable Senate, that the



question of trade liberalization is no longer a subject for debate. It is a reality of the global situation and a reality that most of our citizens have come to accept. Indeed, our local manufacturers acknowledge that trade reform brings increased efficiency and greater competitiveness. Some of our manufacturers have already started to look at ways to become more efficient.

I quote from the *Sunday Guardian* of August 9, 1992, on the front page, under the headline "Business gearing to meet falling trade". The article is one that describes what our local manufacturers are proposing to do; and reads:

"Anthony Agostini, of Agostini Limited, describes the restructuring of staff at his company as a means of increasing efficiency.

Agostini said, based on projections of high interest rates in the medium term, cost-cutting measures were being implemented and borrowings reduced.

'We are not putting our heads in the sand and bawling for help because there is nobody to help us', he said.

At Lever Brothers West Indies Limited, the restructuring plan is to identify low productivity jobs and, in conjunction with the union, move employees into high productivity areas, said Gary Voss, Managing Director...

Richard Jackman, Managing Director of Mc Eneaney Alstons, said clear and stringent target performance on an individual basis was being put in place throughout the Group.

'We are moving people into more suitable positions for which they are qualified, ...'

So, again, we see that our manufacturers are, in fact, responding to this global situation of trade liberalization.

As we see, not only are they taking up the challenge, but they also have concerns. Their concerns centre around the implementation of trade reform—the same point that Sen. Michael Mansoor was making—and more particularly, the setting up of the required safety-net mechanisms. This piece of legislation is but one of the ways that our Government are seeking to address their concerns.

If you listened to the Senate Minority Leader, we are damned if we do not bring it, and we are still damned when we bring the bill. They complain that we took so long to bring the bill, yet the bill was read in the other place over one

month ago, but it took more than four weeks before it arrived at this honourable Senate—I think it was because all 13 of them on the other side wanted to speak. Then again we had Sen. Michael Mansoor complaining that we are rushing the bill. So, it is always very difficult to please everyone.

The point was also made by Sen. Mansoor that, in fact, this bill seems to favour importers more than manufacturers. Again, only this morning, I, too, had a phone-call from an importer; sweating and shouting about how our Government can implement such a bill so biased in favour of the manufacturers. I have some difficulty in understanding why it is so difficult for this bill to be enacted and implemented. I will come to that as I continue in my short contribution.

The aim of this bill is to protect the collective output of our domestic industry against foreign suppliers, who effectively sell to our market at prices below the normal value of merchandise. That is the practice that is referred to as dumping. The basic definition of dumping is set out in Article VI of the General Agreements on Tariffs and Trade adopted at the Tokyo Round in 1979. For the benefit of the hon. Senators, I should like to read the definition of Article VI:

"A product is considered as introduced into the commerce of an importing country, at less than normal value, if the price of the product exported from one country to another—

- (a) is less than the comparable value in the ordinary course of trade for the like product when destined for consumption in the exporting country; or
- (b) if the absence of such domestic price is less than either—
  - (i) the highest comparable price for the like product, for the export to any Third country in the ordinary course of trade;
  - (ii) the cost of production of the product in the country of origin, plus a reasonable addition for selling cost and profit."

We see that this bill before us is in keeping with the GATT Anti-dumping Code and national anti-dumping legislation.

**4.10 p.m.**

Now, I know that Senators may wonder what are suppliers' motivation for wanting to dump and sell at under cost. There are various factors which prompt and encourage a foreign supplier to dump merchandise in this country or other countries. The exporter may receive from his Government substantial incentives

to export, incentives which make it worthwhile to sell at or even below cost. In fact, in some cases, the Government do everything possible to discourage the export of raw materials, so that export licences for raw materials are difficult to obtain. At the same time, they give material support for the export of the end product, especially if the manufacture of which is labour intensive.

So that while it is virtually impossible to import yarn from China and increasingly difficult to obtain their greige bleached fabric, an importer can buy printed fabric to make for example, a bed sheet. But hear this: The cost of the fabric to make the bed sheet is more than the cost of the packaged finished bed sheet. Why? Because, obviously, the local manufacturers are being given incentives to employ people to make the sheets.

As I understand this bill, once I can produce to the authority, the documents showing that to import the fabric is going to be more costly than to import the finished bed sheet then it would be taken for granted that is dumping because there is no way that a finished product can cost less than the raw material to make that product. So, more proof than that is not required. This is only one example. This kind of situation exists not only in the textile and garment industry, but also in other industries.

There are other reasons why exporters dump. An exporter may have the capacity to manufacture 100,000 units and he may have a guaranteed local and export market for 80,000 units at a reasonable profit but economies of scale dictate that for his factory to be efficient, he must produce 100,000 units. What does he do? He seeks out countries like little Trinidad and Tobago, and sells his goods at a vastly reduced price. I know that the initial reaction is that this appears wonderful to our consumers but, remember, that consumer has to have a job in a local industry in order to make the purchase. Therefore, the effect of dumping will be to seriously damage and limit the manufacturing base. That is one of the reasons why we need this bill so that it would protect our local manufacturers from exporters who wish to dump their excess capacity in our market.

It is also very plausible that an exporter may initiate dumping onto a market in order to secure a monopoly by drowning local industry. If we allow that supplier to succeed, you know what he will eventually do? Again, that is why this bill is urgently needed to ensure that exporters and countries do not have the opportunity to drown local industry.

This bill is in accordance with the guidelines of GATT, to which we are, of course, a signatory. Anti-dumping legislation is nothing new. As far back as 1897

Canada was first to introduce such legislation. The US introduced it in 1921 to protect against importation of German chemical products. The object of the anti-dumping action is, again, I repeat: To protect domestic industry against unfair price undercutting by foreign suppliers. Other modes of competition by foreign suppliers may also cause injury to domestic firms and, yet, while GATT rules oblige members to live with the consequences of most forms of competition, they may take measures to counter the negative effects of dumping.

It is also noteworthy that this bill can only be invoked if a local industry is suffering material injury due to dumping. In fact, if there is no industry and one is exporting or dumping in our local market, then there are benefits for our consumer and our country. If we have a local industry it is that local industry that will invoke this law. It is up to the manufacturer, therefore, to bring to the Authority any form of dumping that may be taking place

**Sen. Prof. Spence:** Mr. President, I wonder whether the Senator would address the situation where the industry does not now exist but, the intention is to start it. Suppose you want to start a new industry, how do you get rid of that competition?

**Sen. Rahael:** This bill also, and I think in the same clause 26, which Sen. Michael Mansoor referred to as one that he believes may have some legal implications. In other words there is protection for the establishment of an industry that has not yet materialized. I will come to that later on in my contribution.

This bill is a necessary part of our commercial defence. The bill itself seeks to protect not only existing industry, but contains measures to also ensure that dumping would not prevent a new industry being established locally. So that provision is, in fact, part of the bill before us, where the Minister can take measures to protect a new industry being established.

If someone is interested in establishing an industry, the product that he is interested in manufacturing, he can go to the authority in order to establish that dumping is taking place before he establishes the industry, and the Minister or the authority will act accordingly. Yes, this is also part of the bill.

Clause 10 of the bill also gives the importer relief. As I said, from my perspective this bill is to protect the manufacturer and, therefore, the importer himself must have some course of relief, and the importer as well as the

manufacturer can present his case to the authority. So, it is a fair bill. In my opinion it is not biased one way or the other.

The manufacturer, once he can prove or substantiate his claim that dumping is taking place—and how do you substantiate that? If a manufacturer is an exporter and is, in fact, selling in his own home market at a price more than the export price, then that is considered dumping. If he sells to a third country other than our country, again, that is considered dumping. So the lines are quite clearly defined. I see no reason why this bill should be difficult to implement, as was indicated by the Senator.

We are looking also at the question of standards and labelling. Just imagine our local manufacturers—and I support the statement that the Bureau of Standards needs more teeth. Again, our Government, and the Minister, as Sen. Mansoor has pointed out, have already enunciated that all these things are being put in place. We are working on the revenue protection service.

Container stripping is another method of ensuring that importers do not import and declare one item on an invoice and there is something else on the invoice. This was also mentioned in the other place by the hon. Minister of Finance. On the question of standards and labelling, as I was pointing out, our local manufacturers must label their garments with fabric composition, care instructions, TTBS number, and these labels must withstand, at least, 10 washings. Today, imported garments do not adhere to all those standards, hence the reason we need to have trade reform as a continuing exercise. Trade reform is not a one and done thing. It is not bringing this bill and no other bill. Trade reform is something which has always been in existence, as the hon. Senator also indicated.

#### **4.20 p.m.**

We on this side are very much aware that it is not just the fact that you bring an Anti-dumping and Countervailing Duties Bill and assume that all is good. We know that there is a lot of other work to be done and about the problems at Customs. We acknowledge them and are working towards putting mechanisms in place to counteract as much as we can.

Much has been said about the Minister's authority. That seems to be a very troublesome thing; because where does the buck stop? Where the Minister does not have authority, we all say that we should give him authority. If the Minister does not have authority, then he cannot be held accountable. We have heard this said over and over again.

I firmly believe that the buck has to stop somewhere. You just cannot have an Authority with 10 persons and that is where it lies. The Minister is ultimately responsible. The whole question is that the hon. Minister is prepared to take on that responsibility and challenge, to face political demise, if necessary, to ensure that he will honour this bill.

No Minister in our Government is there for power. They are there to serve. Therefore, there are no power hungry Ministers in our administration as the in-fighting that takes place on their side indicates they are. Do you understand? I can assure them that those of us at the back here are quite satisfied with the performances of all our Ministers.

Without really saying more—I see that we are getting close to the tea break. I do not want to have hon. Senators delay their tea break—I can only conclude from the foregoing that the Government are committed to meaningful and beneficial trade reform. I therefore have no hesitation whatever in asking this honourable Senate to give its full support to this bill.

I thank you.

**Sen. Nigel Cowie:** Mr. President, it is quite a helpful aspect that Sen. Mansoor in his presentation did in fact refer to some apprehension on his part that this was not purely a revenue raising bill.

I wish to address another aspect of the bill from the standpoint of the sequence that leads initially to the imposition of provisional nature which the Minister has the prerogative to apply.

It is all well and good to say that in respect of the framing of the bill and the procedural provisions which would enable the Minister prior to a final determination as to whether duty is exigible, there must be some concern as to whether we are not being invited to promulgate a piece of legislation which will ultimately be prone to constitutional challenge, regard being had to the fact that even prior to the first accretion to the coffers of the revenue of a single dollar in countervailing duty, it must be that the goods would have been impounded; there would be no adverse finding against the importer or any interested person for that matter. Certainly, there would be the aspect of interference with contractual relations pending final determination of the matter and ultimately it may arise that the agreement between the local importer and his foreign supplier could be frustrated by reason of impossibility of performance or otherwise.

We should note that the bill does not say that where it is found that such an arrangement concluded between those parties is of itself, when it is found to have been in contravention of the Act, *pro tanto* void, illegal and/or unenforceable. But this would be the consequential effect of any determination which is adverse to the importer.

In my respectful suggestion, perhaps the Minister would wish to consider whether in view of the interference, or the probable derogation from contractual prerogatives that an adverse determination must inevitably involve, some consideration should not be given to bringing the bill within the ambit of the special majority type of legislation.

But quite apart from that, one wonders exactly what the position is to be, on a speculative basis if it is that the final ministerial determination of the matter of whether duty is exigible or not is not an adverse one to the importer, what provisions, if any, can be invoked in the bill for compensation to accrue to such an importer, especially if he finds himself in the unfortunate position of being subjected to a very high imposition on overdraft account in respect of shipments and consignments which quite possibly can involve several million dollars in any given instance. And we should, for the practical purpose of the foreign exporters' situation—because that foreign exporter is no doubt within the definition of an interested person as is provided for in the interpretation clause of the bill—that foreign exporter would invariably find himself kept out of his money—

**Sen. Mansoor:** Mr. President, I should like to ask the learned Senator to help me on this. I should like to know where in the legislation the physical act of impounding is going to take place because I think this is generic to his argument. Could he tell us where that comes in, please?

**4.30 p.m.**

**Sen. Cowie:** In response to the Senator's inquiry, what I would suggest is that the bill itself is devoid of specific provision in that regard, but inevitably, it must be that, pending the ultimate determination, the importer would not be entitled in the normal course to avail himself of the benefit of use, disposal and otherwise, of the goods that are the subject matter of investigation. So, if it would assist the Senator, I would suggest that it arises as a matter of necessary and inevitable implication and inferrals that there must be some detention or restraint on the enjoyment of these goods, pending the outcome of the investigation. It is that hiatus between the irresistible inference and the ultimate disposal of the

investigation, one way or the other, within which the concerns that I have attempted to articulate are being expressed.

Because allied to the Senator's well-appreciated concern that the burden of proof in respect of liability on the part of officers and directors of bodies corporate is being reversed, I would suggest as well that there are serious proprietary implications and implications for the derogation from contractual prerogatives between parties of, shall we say, commercial purpose and intent.

It is against this background that I would wish that some concern on this Minister's part should arise, in view of the fact that court lists are replete with instances—some live, some now historic—of abuse and wanton, wrongful exercise of ministerial and administrative discretions.

Now, in particular regard to the confidentiality provisions that are made within the ambit of clause 20 of the bill, I am concerned that the bill seeks, in effect, to insulate, with confidentiality, those informants who would be disposed to volunteer information to the Authority, and the insulation would extend to protect such individuals—because there is no provision otherwise, it appears, on the face of the bill to insulate such individuals against challenge by those persons who stand to be adversely affected by the pendency of any ministerial determination. This is a very dangerous dimension on which we are about to embark.

There is a further concern that it would derogate from some of the fundamental principles of natural justice which would permit, in the normal course, an aggrieved person to confront his detractors and accusers, and to deploy whatever means available—whether by cross-examination or by other enquiry before the appropriate Authority.

It purports at clause 20 to derogate from one of the fundamental principles of the right of fair hearing, and we should be all the more cautious in that type of circumstance to forestall a situation in which someone who might very well be motivated by ill will—perhaps an aggrieved competitor in an extreme situation—creating, in effect, what is really a temptation to even further abuse, and this not necessarily at the instance of the Minister, because he would merely be the agency through the Authority that is receiving the complaint.

I would not trouble Members of this honourable Senate with much of the concern with respect to how anomalous it is to bring a matter that in the normal course is stated to be on appeal for adjudication by the Tax Appeal Board, where



the Board of Inland Revenue has not been the original first instance agency of intervention, if I might describe it as that.

But, I would express some apprehension as to the basis for the determination between when a *prima facie* case may be said to have arisen against an allegedly offending importer, and a *prima facie* case from the interim or provisional determination that the Minister is empowered to make. Because he must even, subsequent to his provisional determination, arrive at a final and conclusive finding within six months. Well, one wonders given the difficulties that have been articulated as far as the gathering of intelligence and formulation of an information matrix are concerned, and given our knowledge of our own domestic and other limitations, how realistic that time-frame can be said to be.

It is quite a bland statement to say that there will be expertise available internationally. But, in effect, would this not involve, of necessity, a further drain on what we are quite aware, at this stage, are limited foreign exchange resources? We would be certainly aware, from our recent experiences, of the inevitable costs that are attracted in matters of, what we might describe as forensic and other types of accounting and investigation overseas.

I would wish, as well, to invite the Minister to relieve the office of the Minister responsible for Trade, Industry and Tourism of the obligation which is provided for at clause 29—subject to correction—to virtually review himself, because quite apart from being virtually a sole determinate Authority on his own part and of his own motion, one would wish to suggest that the Authority would be a preferable forum for exercising this prerogative of review.

Without troubling this honourable Senate too much with respect to the fine-tuning of the drafting, one would need to be guided by, perhaps, some clearer indication from the Minister as to what exactly is that "something else" which appears at clause 3(3) on page 4 of the cyclostyled copy of the bill.

**Mr. President:** Before you continue, do you expect to be much longer? If so, we can take the break at this stage.

**Sen. Cowie:** I anticipate no longer than 15 minutes.

**Mr. President:** I think we will take the break at this time. The sitting is suspended for approximately 30 minutes. The Senate will resume at 5.10 p.m.

**4.40 p.m.:** *Sitting suspended.*

**5.10 p.m.:** *Sitting resumed.*

**Sen. Cowie:** Mr. President, I had been adverting to a rather mischievously framed reference at clause 3(3), to matters in respect of which consideration would have to be given to determine whether or not a subsidy, bounty or other benefaction had been accorded in respect of goods exported from foreign countries. It would be noted that the phrase in parenthesis:

"(whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves or to materials of the goods or to something else)".

may be said to be a rather mysterious phrase, because, theoretically, it can include virtually anything. Given the plenitude of the ministerial discretion that appears otherwise in the bill, this underlines the concern that the bill, in this regard and otherwise, constitutes an invitation to abuse an arbitrary ministerial action. Because here it is that the legislation itself is saying that it cannot be exhaustive of those matters to which regard should be paid to determine whether or not a benefaction has been accorded, but it says, in effect, that regard could be paid to virtually anything, whether or not that may or may not be relevant to the question of determining bounty or subsidy.

A further mischievous dimension in the bill appears in the attempted definition of the term, "associate". What is it, in particular, at clause 3(6)(d), for example, that has prompted the drafters of this legislation to conclude that five per cent or more of the outstanding voting stock or shares of a person—for whatever that is worth, because, one is not quite certain what is meant when one says that an associate includes:

"any person directly or indirectly owns, controls, or holds five per cent or more of the outstanding voting stock or shares of both of them."

One wonders if natural persons are anticipated to be engaged in the activity of issuing stocks and shares in themselves.

Now any provision for retroactivity that appears in legislation is ground for concern, and it is all the more critical, given the level of subjectivity on the basis of which the Minister can arrive at his determinations. If it is that the Minister is minded to be guided by certain of the more current and highly authoritative judicial pronouncements, I would invite him to consider certain of the local judicial decisions, *inter alia*, *Kalical Samlal v the Attorney General and the*

*Comptroller of Customs.* This involved the wrongful seizure of imported goods, which is a matter that might be likely to arise in the circumstances of this bill. That is a situation in which there has been an adverse determination of that matter against the state and it is no doubt going to cost the state several millions of dollars—an instance of wrongful exercise of administrative discretion.

The Minister could as well be guided by the pronouncements of the Court of Appeal in the *L.J. Williams and the Chief Immigration Officer*—that decision which involved inequality of treatment by a public authority. But no doubt he would be most ably guided by his legal advisers, I trust, if it is that he decides to be guided in this forum at all.

In closing, I would suggest that, quite apart from the concerns that I have attempted to raise in respect of there being more to the legislation than really meets the eye, particular regard of its purported status as a purely money bill, as a general proposition, I would urge that until ministerial action and the exercise of administrative discretion and executive decision-making within the Republic of Trinidad and Tobago, become characterized as a general rule by good faith in dealing, and the absence of bias, preferential treatment, it would be dangerous to impart those wide powers that are being provided for in this bill. Until that status has been attained, one does not confer lightly, if at all, that kind of prerogative on the ministerial executive.

On that note I must confess that I have exhausted the range of my comment on the bill at this stage. Thank you.

**5.20 p.m.**

**Sen. Prof. John Spence:** Mr. President, there is no doubt that I welcome a bill which deals with anti-dumping coming before this Parliament. It is now some two years since I took particular action to try to bring this to the attention of the authorities.

Not too long ago, in another presentation, I quoted a letter that I had written to both newspapers calling for this sort of legislation. So I do not think that it is true to say that bringing it to the Parliament has been rushed by the two Governments involved. What I think some Senators are concerned about is the fact that we may not have enough time to consider it. The consideration process, I think, is what some people are worried about and whether we shall be able to improve it by suggesting amendments.

Most Senators have made some more general reference to the present policies being pursued by the Government. I will make a very brief mention of that, because I have spoken on innumerable occasions recently on that theme and no doubt if the Government's economic policy, which I read in the newspapers is being formulated, comes to the Parliament, we would get an opportunity to discuss it then and no doubt in the budget debate in September there will be another opportunity provided.

I shall quote from two recent newspaper articles which struck me as being interesting in this regard and I think they make the points that I would have made. The first one is taken from the *Trinidad Guardian* of Friday, August 7, 1992, page 5. It is a report from Kingstown, St. Vincent, the country of my birth. It says:

“IMF team gives St. Vincent positive economic review.

By and large, it is a very positive assessment...”

they are quoting one Thomas Reichmann, from the IMF.

““The situation here is very nicely under control.””

Again in quotation marks,

““The economy is growing again, inflation is relatively moderate, the fiscal situation seems under control, so by and large it is a very satisfactory picture that emerges from our analysis.””

Now, Mr. President, comes the point I think that really characterizes this approach:

“Reichmann said that unemployment, placed at 25 to 50 per cent of the labour force, as well as the uncertain future for banana exports to Europe were areas of concern raised.”

Not areas of his concern, but these were areas that were raised to him.

So an economic policy is said to be successful and good and very satisfactory, and so on, with an unemployment rate of between 25 and 50 per cent. I think that really says all that one needs to say about pursuing a policy of that sort with respect to its consequences for unemployment.

The other article that I should like to refer to addresses the question that has been raised by some Members of the Government side about the present global reality. Now, I question that the present global reality is the one that we are

suggesting it is, that is, that the world is moving towards trade liberalization as a major thrust. This is taken from the *Observer* of the United Kingdom, of Sunday, July 5, 1992, and it is written by one William Keeghan:

“This week’s World Economic Summit, in Munich, takes place at an interesting historical moment. Communism has collapsed, but so has capitalism—I am sorry, I will write that more precisely: The capitalism that has won the battle against communism and is being called upon to help the disintegrating economy of the former Soviet Union, is not in very good shape, but it is the only system—if that is the word—that we have left.

Naked capitalism is not a system at all, as some parts of the new Soviet Union are discovering for themselves. In order to make capitalism work better, various rules and regulations both national and international have been imposed on it over the years.

But international co-operation and co-ordination got a bad name during the 1980s. Since then, policymakers have hemmed themselves in. And although discussions about the feeble state of the so-called “world economic recovery” go on, nothing much is done.

An important issue such as negotiations on the General Agreement on Tariffs and Trade keep getting bogged down in domestic issues. The latest barrier to a resolution of the international trade talks has been manifested all over the French Road Network in the past week.”

No doubt the newspapers here, while I was away, would have carried the stories of the protest of the French farmers. So it is not the case, in my opinion, that the world is moving towards trade liberalization.

What is happening is that the IMF and the World Bank are insisting that those countries that are in debt should follow that path and, therefore, it is for us to use our wits to try to emulate the same countries that are controlling those agencies in order to stem that tide, because that is what they are doing. That is why anti-dumping legislation is so important, and that is why some of the other aspects that have been referred to here this afternoon, which I have spoken about before, like labelling—one can do a great deal by way of assisting in certain characteristics of labelling which we have to obey when we export to those other countries—all of these measures, as we have discussed this afternoon, are extremely important to be put in place by us.

With that very brief general comment, I would make one or two comments about the bill itself. My concern on reading the bill had to do with subsidies. That, perhaps, is because of my background in agriculture, my concern would be more with the agricultural sector. It seems to me that the bill had not, in fact, defined as precisely as may have been necessary, what constituted a subsidy. I would just suggest to Sen. Rahael that perhaps the issue is not quite as straightforward as he would have us believe.

If I could give an example, in the state of California—a very dry state—irrigation is necessary for most of their agricultural production. That irrigation water is supplied at a certain cost, the cost being considerably lower than the economic cost would have to be if it were supplied commercially, for example.

In other words, the farmers in California are being supplied with very heavily subsidized water for their irrigation and they could not grow those crops without the irrigation water which is so supplied. That is for reasons such as that, that I am so concerned about the aspect of subsidy.

In fact, the price of those products may be the same in the United States as they are here. It may not be that they would sell them at a lower price. But the fact is, they are subsidized there. Equally, many of the European farm products sell at lower prices there because they are subsidized and so we would be buying them also at subsidized prices. That is what we have to address, certainly in the case of the agricultural sector. If a farmer is paid not to cultivate land, then the rest of his farm is being subsidized and this happens in Europe and the United States. Now, this is a much more difficult thing for us to investigate and to prove. This is why the machinery for investigation is so important.

One aspect that is not being mentioned here at all this afternoon is Caricom collaboration. Last week we had a debate about giving of awards which I did not enter because, quite frankly, it did not seem to me of any great importance when it came to Caricom matters. What is important is that we collaborate on issues like this. We cannot afford to set up all the machinery and do all the investigations that we need, to set up all the trade personnel that we would need in all the various countries to investigate these issues.

It is just possible that if we collaborate with the 13 other nations within Caricom, we might be able to make some progress. But is there any sign of this? This is why it is so sad about Caricom, because there are things which could be meaningful, which do not mean political sovereignty being given up, which do not

mean Ministers of Agriculture, Health, Environment, Science and Technology meeting every month. All it needs is for the Heads of government to agree that they set up a common system for monitoring trade matters. As we have all said, the trade regime that we are fighting is the most important aspect for our survival and our well-being for the next few years.

Surely, this is an area for Caricom and for a common approach to, at least, the acquisition of information. Surely, it is an area where we need very rapidly to use modern systems of technology. We often boast about our high level of education in this country, which is absolutely true, but half the people who are trained in the areas that could be useful in something like this, cannot find employment. They are out of the university and they cannot get jobs. Others, who have university degrees, because of their basic training and education, could be trained in this area without much difficulty.

It seems to me that we have to start thinking about how we reorganize our priorities, not how to spend more money. The problem is that each time something like this comes up, we are talking about employing more people. No doubt we shall soon see an advertisement in the local press for staffing the office that has to deal with these trade matters. Surely, that is not the issue. I am sure that Minister Draper would not approach it in that way and I am hoping that he is able to persuade his colleagues and the trade union not to approach it in that way.

With respect to the issue of primary agricultural products only being protected, this really, in fact, is taking us backwards, because this is what we had in the colonial times—that we were the producers of raw material in the agricultural sector, to be processed abroad and here we are, back with it 50 years later. I sometimes feel that the whole period of my life has not seen any progress, which is very sad at my age. We should not only be fighting to protect primary agricultural products; we should be insisting that our agricultural products be processed for greater value added, and that those products also be protected. Otherwise, we get the lowest possible price for them and all the value added goes to the other countries. That certainly concerns me—the fact that what we are able to protect are primary products only.

I must say that I was very concerned with some of the issues raised by Sen. Mansoor and I am very glad that he spoke first, because it emphasized the point that we are going to need to address modification of this legislation very early on—and also Sen. Cowie. It is clear that we must ask the Government for an

assurance—and I am assuming that we shall pass this bill in the next day or two—that there will be an early review.

It seems to me that the points that have been made here this afternoon are extremely important and should be taken aboard by the government in making that review, in addition to all the other things that will come up once they start operating the legislation.

The issue of appeal by the manufacturer is also one that I would add my support to as well. Because the right of appeal of the importer is to another agency other than the Minister, whereas the manufacturer seems to appeal only to the Minister.

I do not think that the comments made with respect to all the power being concentrated in the Minister were intended to suggest that a Minister would necessarily abuse those powers, but I think it was meant to emphasize that you really have to have the full machinery in place, even more particularly, you have to have the regulations. Of course, this is a problem that we are facing frequently in bills.

Some of the criticisms that we make may not be valid, because they may be addressed in the regulations. There are two ways of looking at it: one may say that having the discussion first would help the Government to frame the regulations and take the points that have been made into account. On the other hand, it does mean that we will be making some comments which do not carry the weight they should, because they may be addressed in the regulations.

So once again, as with many bills in the past, it seems to me that the regulations are going to be extremely important to ensure that the apprehension that we have that all of this power resides in a single person, may not be quite as difficult or bad as we seem to feel at this stage.

In closing, Mr. President, I will make one additional point, and that is to refer to a point that was raised previously by another speaker and that is about the “Buy Local Campaign”. The problem that I suffer from when I go into a supermarket or into a store is, how do I know what is local? It seems to me that unless we are identifying local products, the consumer is going to have much difficulty in identifying where he should direct his purchase if he wants to buy local.

Again, I would urge the hon. Minister to address the issue of how to identify local products. Do we make a distinction between a product that has 90 per cent



local input as opposed to one that has 10 per cent? Sen. Mark has pointed out that some of the “local goods”, in fact, have very little local input. We should distinguish one from the other.

I would prefer to put a black mark against the imported goods, but clearly that may get us into bad odour with other countries, so the best thing is to put a good mark on our local goods, a red circle or a green circle or a red, white and black circle or something that would identify them as local.

Mr. President, that is my contribution. Thank you.

**The Minister of Public Administration (Sen. The Hon. Gordon Draper):** Mr. President, as I rise to support the measure before us, I think of context and framework as well. It has already been identified that this particular measure is one of a series of measures which need to be dealt with in the context of reform. Some of these measures would relate to legislative action, but some of them would relate to institutional strengthening and to the reforms that are necessary.

I will focus my remarks on the issues relating to institutional strengthening and reform. I do this because Sen. Wade Mark has already alluded to issues relating to efficiency and the administration of Customs, and Sen. Mansoor spoke about some concerns he had relating to our commitment to implementation.

I think it is important that we recognize, when we talk about institutional strengthening and reform, that we are talking about a process, a process that involves a number of actions that will take time. So, when Sen. Wade Mark makes a comment that the Prime Minister on March 8 spoke about institutional strengthening activities that are under way and laments the fact that Minister Kuei Tung would talk today about these activities still being under way, I think it points to the absence of an understanding on his part of what organizational change is all about.

We are really talking about changing a system that has been entrenched over a long period. We are talking about changing management systems, values and organizational cultures. These things do not happen in mere weeks or days. Indeed, in a real sense, these things never end. The changes and the reforms are always under way. Therefore, what is critical for us to understand is that we have begun a process, the process continues and the process will continue. It is under way.

I came here and joined the budget debate and said then that the Government stood totally committed to implementing public service reform. I come here today, some months later, to say that not only is that commitment continuing to be real, but also that over these past months implementation of public service reform has been under way and will continue to be under way.

Institutional strengthening with regard to this particular measure would perhaps focus more directly on places like the Ministry of Trade, Industry and Tourism; Customs and Excise and places like the Bureau of Standards, all of which are vital elements in this particular set of actions relating to the reform of trade. Therefore, we need to understand how that process is proceeding and we need to understand where we are in some of that.

If we are to strengthen the institutions to ensure the implementation of what Sen. Mansoor speaks, it means that we have to ensure that all those persons who work in these institutions understand the direction for change, must themselves be part and parcel of that process for change and, must therefore, understand the new behaviours and attitudes which are important. All of this says that we, as a Government, must recognize that we cannot bring about those changes by legislation; we have to bring them about by hard work within those individual departments or ministries. That is the work that is under way.

As part of that whole series of reform activity, we have embarked on a particular process of strengthening and reforming these institutions, which allows persons who work in these organizations to become totally involved. It means, therefore, that all of those persons whose behaviours and attitudes must be changed will get an opportunity to help shape the direction of the organization.

I want to relate that particular approach to the Customs Division. I was not privileged, like Sen. Wade Mark, to listen to the news on television last night. I was about managing the nation's business at that time; I unfortunately did not have that luxury, so I did not hear what was said. What I can say, however, is that we have begun the process that I just described within the Customs and Excise Division, by having all persons who work within that organization meet to reflect on themselves, particularly to look at a vision within the context of trade reform and to identify the directions that they need to take to ensure that the administrative elements which need to be put in place, are put in place.

Coming out of some of that work, the Customs and Excise Division has identified some visions which speak about their own commitment to developing a

division that is seen as one with the highest levels of integrity and trust, one that is properly and appropriately structured and one that is appropriately managed so that they can fulfil their mandate in the context of the trade reform activities. This is not something that is being imposed from outside, because one of the things we need to recognize is that if we are to bring about lasting and meaningful change in any organization, that has to come from within.

I know that Sen. Wade Mark in other speeches has spoken about involvement of the masses, and so forth. The process of reform in which we are engaged allows that kind of involvement. It means, therefore, that we are at a point now where we have, not only the commitment of the Government to ensure the necessary reforms and institutional strengthening in a place like Customs, but we are also now at a point where we have the commitment of the persons who work in there to bring about those changes.

Let us be fair and open. They recognize that there are issues that needed to be dealt with in terms of corruption. They recognize that there were practices which were inefficient and ineffective which needed to be weeded out. It is not as though they are speaking about a utopia and are blind to some of their own weaknesses. It is a clear recognition of their weaknesses which have been built into this process and upon this we can now build.

Let us also not feel that solutions to these problems relating to institutions and ministries in our society can be solved merely by adding more people to the payroll. Sen. Wade Mark spoke about the issue of the Customs being understaffed, and I take a question that Sen. Spence raised as to whether this was, in fact, the solution.

Let me say, Mr. President, that as we speak about implementation and institutional strengthening, we need to understand that there is a whole mix of things that will go into this and that the simplistic notion that all we do to improve efficiency and effectiveness is add more bodies, is not one that we will embrace.

This is not to say that if a clinical analysis determines that there is need for more staff, that more staff would not be included. What it does say, however, is that we cannot begin by merely saying that we are overstaffed or understaffed. It is that kind of myopic approach to trying to change organizations that really leads us into trouble and difficulty. We intend to pursue the strengthening of these institutions by using a more clinical and objective approach.

The notion of the importance of training was also identified. Let me say that, clearly, if we are to improve the levels of efficiency and effectiveness of Customs, or the Bureau of Standards or the Ministry of Trade, Industry and Tourism, approaches to human resource development which would include training would be central aspects of that work. But let us recognize that when we speak about training, that training would involve a host of different kinds of experiences and exposures that people must have.

Therefore, our commitment is to ensure the development of the human resource, the training in all aspects of the human resource within Customs, whether it be management, an understanding and appreciation of these new measures, or an understanding and appreciation of the international environment within which Customs must now work. Training, therefore, will continue to be a central part of our activity. But if we are to speak about performance and implementation, it is important that we establish very clear guidelines and yardsticks within which officers throughout the public service, and in our particular case here today, in these agencies which concern us with regard to implementing these measures, are clear about what their own objectives are, and that we must establish yardsticks to measure their performance.

Therefore, in the same way that Sen. Mansoor has been raising with us the question of time-tabling and the issue of establishing benchmarks against which one can measure the performance of the Government, implementation for us within a place like Customs must also mean the establishment of performance standards and performance appraisal systems against which we can then measure the performance of individuals there.

One of the things that we have, therefore, done as part of our implementation of public service reform is to develop—and I will speak now of two particular approaches which will facilitate clear identification of performance targets which implementation measures, such as the one we are debating here today, can be evaluated.

I refer to the introduction within the public service of a culture of strategic planning, to say that the Customs and Excise Division, like every other division and ministry within the public service has been asked to develop plans, and that clearly the plans which they develop must be developed against a background of legislation which we are now passing, must be developed against a background of trade reform measures which the Government are currently engaged in. We,

therefore, will have a very clear statement of objectives coming out of Customs, coming out of the Ministry of Trade, Industry and Tourism that will establish targets and activities and against which, therefore, we can measure implementation.

**5.50 p.m.**

More than this, we have also recognized that we need to roll down this issue of establishing targets for implementation from the global organizational level to the individual level. A critical element of the roll down has to do with the development and introduction of individual performance-appraisal systems; because, ultimately, it is the performance of an individual within the organization that will determine things like turnaround times; whether they adhere to rules and regulations, and whether they implement the measures which we pass in this Senate.

On that basis we have as of now developed a new performance-appraisal system for the public service; one which is based on the establishment of performance standards for individuals—a system which will be introduced on a pilot basis beginning September 1, 1992, in the Ministry of Agriculture. What this means is that for the first time we would have put into the public service a mechanism which really allows us to link individual performance to division or ministry performance and targets, and which allows us on a regular basis to evaluate that.

I say all of this, really to let Sen. Mansoor know that the elements which go into changing the approach to the management of the public service, including the Customs and Excise Division, are well in place. Sen. Wade Mark may not like to hear the words again, “they are under way.” These are not things that happen overnight, or you wake up on a Monday morning and find that you have a performance-appraisal system that works. You may be alarmed to discover that these things have to be tested and tried over time before we determine that they really work. Therefore, for a while, they will be “under way.”

As we say this in relation to the Customs and Excise Division, we recognize, no less, a need to develop similar institutional strengthening mechanisms in place like the Bureau of Standards, recognizing that they, too, will require training; they, too, must understand their own role and new perspectives in the context of trade reform. Again, the process which one would use to introduce that change there

could really be the same that I have identified with regard to the Customs and Excise Division.

In a sense we are faced with an interesting dilemma: Do we hold back on legislation while we proceed with those reforms; or, do we recognize the urgency of both sets of activities—the legislation and the institutional strengthening work—and therefore, seek to carry both things at the same time? Recognizing where we are in terms of development; where we are in terms of our need for legislation action, where we are in terms of our need for institutional strengthening action, the Government have opted to proceed on both fronts at the same time.

It means, therefore, that periodically we will come to this Senate—and there are questions raised, as they are very validly raised by the Independent Bench about whether we are fully ready, in terms of the administrative machinery. What we can say is that we are putting in place all the mechanisms and systems to ensure that the administrative machinery will be ready.

My friends in the Opposition who may have concerns about whether this is theory, must recognize that a place like the Customs and Excise Division has some 700-odd people working there, which is, in fact, larger than most of the private sector organizations in this country. Therefore, one needs to understand the magnitude of the task of change. More than this, we can point to the fact that the work we have already begun, since January, has begun to bear fruit; that we are now in a position to—as we are now currently doing—analyze strategic plans coming up from places like the Customs and Excise Division; and that we are now in a position to start training people and implementing that new performance-appraisal system that I talked about.

We are ready and we need to recognize that we are really in a mode about managing and attempting to institutionalize significant change at varying levels in our society. At the global society level, we are indeed dealing with an international environment that has changed.

Sen. Wade Mark started by quoting Kari Levitt, talking about the old order having passed and, perhaps, questioning whether it has. I do not know where he is, but the old order has passed, and we need to understand new realities.

**Sen. W. Mark:** The Minister misunderstood me. Does he wish that I quote it again?

**Hon. G. Draper:** If the Senator wishes to quote it.

**Sen. W. Mark:** Mr. President, it was not a question of the old order having passed. What she was saying is that it seems that people, like the Minister, are programmed. I will quote directly:

“It seems that we are being programmed to adjust to the fact that the ‘rules of the game’ have changed. The old order has passed; the old engines of growth of peripheral economies are obsolete; and the new ones offered in the form of ‘outward-looking development’ will, if we are not careful, pull us back to the status of export-import economies, but this time around, with no external investment and no strong markets.”

So, I think the Minister has to be very careful, she was thinking about people like him, when she was making this statement.

**Hon. G. Draper:** Mr. President, as I was saying—as Sen. Wade Mark just quoted again for us—we recognize that the old order has passed. The old order has passed and those of us who, perhaps want to continue wallowing in the quicksand of some archaic ideologies, grasping at branches that have long since blown away, can live in that old order. Managing Trinidad and Tobago, in 1992, requires us to understand the new order. It requires us to understand, therefore, that changes in the international environment require us to examine our own system, to change accordingly; recognizing that change has to be carefully managed; recognizing that managing that change to bring about the implementation that Sen. Mansoor is concerned about, and truly allows us to put in place, over time, those new systems.

Today, therefore, as we meet to debate this bill, and as we raise issues about the extent to which the administrative machinery is prepared to treat with implementation of this bill, I would wish to assure you, and this honourable Senate, that the commitment which the Government state in January, to ensuring that we implement reform of these systems, institutions and ministries, continues. I wish to assure you, and this honourable Senate, that over these few months we have been able to make significant headway in terms of developing elements of that new culture in the Customs and Excise Division as a central part of the development of those changes.

I would wish to assure this honourable Senate that the Ministry of Trade, Industry and Tourism was also identified as one of the priority ministries for

precisely the reason that we understood the central role which that ministry would have to play in the execution and implementation of measures relating to trade reform.

**6.00 p.m.**

So that to my friend, Sen. Mansoor, I would say that the commitment to implementation remains. The commitment to managing the change within the varying organizations and units to assure implementation, remains. But more than that, we have been able to work at it; we have been able to put in place a process which will allow change to take root, which will truly allow us to be able to manage under this new system. I, therefore, against that background, have no difficulty in supporting this bill and would wish, therefore, on that basis, to encourage my friends on the opposite side to do likewise. Thank you, Mr. President.

**Sen. Rev. Teelucksingh:** Mr. President, may I ask a question of the hon. Minister? I am very much interested in all the grandiose plans to change systems and all the institutional mechanisms. I should like to ask the hon. Minister, and this is where my question—

**Mr. President:** The Senator has already concluded his contribution.

**Sen. Rev. Teelucksingh:** Is it too late?

**Mr. President:** I would suggest that when you join the debate you can take up the point.

**Sen. Rev. Teelucksingh:** Mr. President, somehow or the other, if I may make this observation, I find it so discourteous to get up while someone is speaking to interrupt him. I find that there are so many people who have done this. They break the person's train of thought, and so forth.

**Mr. President:** What you are doing is making a statement and not asking a question. If you want to ask a brief question, I would allow it.

**Sen. Rev. Teelucksingh:** Thank you very much. About change and reform and looking at the system, I would like to ask, what programmes are envisaged concerning the changing of people's attitudes and their hearts? What are we doing? You can change the system, but what about people's attitudes, commitment, and so forth? That should be a part of the Minister's reform programme and I am afraid that within those months that he has covered in his term, I have not seen or heard much of that.



**Mr. President:** Senator Teelucksingh, I should warn you that the Senator had a particular experience since the end of last Tuesday's meeting which ended in a rather unusual manner, but proceed.

**Hon. G. Draper:** Mr. President, I shall have to be very brief though what he has asked could take up the rest of the afternoon. What I would say to him—and we can go into more detail after—is that I agree with the point he is raising, but to change the things that he asks about includes a number of things. It talks about training, about putting in new environments; it talks about new management styles, feedback. All of these things are part of the programme that we are putting in, but recognize, as I was saying, that these things take time. Thank you.

**Sen. John Rooks:** I have very little to say because most of what I intended to say have already been covered by Sen. Mansoor. There are one or two points that I wanted to query. Clause 16:

"The Minister may designate the Permanent Secretary in his Ministry or such other person as he thinks fit, to be the Anti-Dumping Authority for the purposes of this Act".

I would suggest that the Permanent Secretary be appointed chairman, and have a tripartite Authority comprising a senior member of Customs and a member of the Chamber of Commerce, or the Manufacturers' Association whichever is better suited to the particular case.

On page 20, clause 20 (1) :

"Any information provided to the Authority on a confidential basis by any person in the course of an investigation shall, upon the Authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed by the Authority to any other person without the specific authorization of the person providing such information"

But then it goes on to say at subclause (2):

"The Authority may request persons who have provided confidential information to furnish—

(a) a non-confidential summary of the information;

That, to me, does not make sense. If something is confidential, you do not want it lying around in writing where everybody can read it. I think it is asking too much to ask somebody for confidential information, and then make it non-confidential.

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The other thing that I am little bit hazy on is what happens when material comes that is suspected of being dumped. There is a lot of time that goes by and I am not quite sure what happens to that material. Is it impounded? Is it given to the person who imported it? And then everything starts. But, then it goes over quite a long period. The first is three months after an investigation has been initiated, and then it goes on another six months after that, before a final decision can be made. What happens with all the material? Is it sold without knowing what the duty is going to be or, anything of the kind? These are the concerns I have. Maybe I do not understand the legal jargon, but those are my concerns and I am sure the Minister will answer when his time comes to reply. That is all I have to say for the time being. Thank you very much.

*Motion made and question proposed, That the Senate do now adjourn to Wednesday, August, 12, 1992 at 1.30 p.m. [Hon. L. Saith]*

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.07 p.m.*