

SENATE*Friday, July 12, 1996*

The Senate met at 10.02 a.m.

PRAYERS[MR. VICE-PRESIDENT *in the Chair*]**SENATOR'S APPOINTMENT**

Mr. Vice-President: Hon. Senators, I have been advised by His Excellency the Acting President of the Republic that he has revoked the appointment of Mrs. Nirupa Oudit who had previously been appointed to act on behalf of Sen. Dr. Eastlyn Mc Kenzie since Mrs. Oudit is unavailable to attend today's sitting, and he has further advised that he has appointed Mrs. Joan Bishop a temporary Senator with effect from July 12, 1996 and continuing during the absence from Trinidad and Tobago of Sen. Dr. Eastlyn Mc Kenzie.

OATH OF ALLEGIANCE

Sen. Joan Bishop took and subscribed the Oath of Allegiance as required by law.

PATENTS BILL

Bill to make provision in respect of future patents and applications for patents; for the protection of inventions, to give effect to certain international conventions on patents and for connected purposes, brought from the House of Representatives [*The Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings.
[*Hon. K. Persad-Bissessar*]

Question put and agreed to.

INDUSTRIAL DESIGNS BILL

Bill to provide for the protection of industrial designs and for related matters, brought from the House of Representatives [*The Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings.
[*Hon. K. Persad-Bissessar*]

Question put and agreed to.

LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS BILL

Bill to provide for the protection of layout-designs (topographies) of integrated circuits, brought from the House of Representatives [*The Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings.
[*Hon. K. Persad-Bissessar*]

Question put and agreed to.

GEOGRAPHICAL INDICATIONS BILL

Bill to provide for the protection of geographical indications and related matters, brought from the House of Representatives [*The Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings.
[*Hon. K. Persad-Bissessar*]

Question put and agreed to.

PROTECTIVE SERVICES (COMPENSATION) BILL

Bill to provide for the payment of compensation to officers of the protective services who suffer injury or die in circumstances arising out of and in the course of employment with the State, brought from the House of Representatives [*The Minister of National Security*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate.
[*Brig. Hon. J. Theodore*]

Question put and agreed to.

PROTECTION AGAINST UNFAIR COMPETITION BILL

Bill to provide for protection against unfair competition, brought from the House of Representatives [*The Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate.
[*Hon. K. Persad-Bissessar*]

Question put and agreed to.

10.10 a.m.

SENATORS' SAFETY

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, before the hon. Minister of Legal Affairs rises

to address the various Bills before this Senate, may I take this opportunity to inform this honourable Senate that, as we are well aware, there is a Commonwealth Parliamentary Association conference currently taking place in the Turks and Caicos Islands and three of our Senators are, in fact, in that particular island. As you know, Hurricane Bertha had been threatening to overwhelm that island and many families and friends were concerned about the state of our delegation there. I am pleased to inform this honourable Senate that based on investigations conducted by the Ministry of Foreign Affairs yesterday, our delegation is safe and well and they are staying at the Royal Bay Hotel. So safe are they that they conducted a full tour of the northern part of the Caicos Islands yesterday and I understand they are supposed to be back some time tomorrow.

I just wanted to inform this honourable Senate that our Senators are safe and well.

RELATED BILLS

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Vice-President, the Patents Bill, 1996, the Industrial Designs Bill, 1996, the Layout-Designs (Topographies) of Integrated Circuits Bill, 1996 and the Geographical Indications Bill, 1996 are inter-related. I therefore humbly seek your leave to present these four Bills standing in my name in one presentation.

Question put and agreed to.

Mr. Vice-President: Hon. Senators, while the question is being proposed for the Patents Bill only, let me remind Senators that they may make contributions on all four Bills.

PATENTS BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Vice-President, I beg to move,

That a Bill to make provision in respect of future patents and applications for patents; for the protection of inventions, to give effect to certain international conventions on patents and for connected purposes, be now read a second time.

In the House of Representatives on Tuesday, this package of legislation, as Senators are aware, was taken through. But I want to remark upon a remarkable

sight in the House of Representatives on Tuesday of this week when the Hon. Prime Minister sat with his lap-top computer and was able to do so much work. So that what we are witnessing, as we approach the 21st Century, is a new era of mankind unfolding before our eyes. We see the age of high technology; we see the electronic age. As we are going into globalized economies we see the world shrinking before our very eyes. I think I mentioned this before in this honourable Senate, that we can do things in one part of the world and in seconds they are relayed across the entire globe. Incidents that occur in one place, in seconds can be seen and heard across the entire globe. So that we are seeing a shrinking of our world as we count down to the 21st Century. So that Trinidad and Tobago cannot be isolated or insulated from the rest of the world. Indeed, we cannot afford to be isolated or insulated from world events and world happenings, from what is taking place in the rest of the world in terms of development, in terms of economies, in terms of international trade.

So within this changing scenario, in these last few years, counting down to the 21st Century, this Government has embarked on a progressive legislative agenda so as to facilitate the absorption of advanced technologies and the stimulation of domestic, innovative activity in order to contribute to the development of Trinidad and Tobago, and, in my respectful view, to so place Trinidad and Tobago firmly on the world map.

This legislative package comprising the four Bills that we have itemized, is our package to reform and revise the law relating to intellectual property. We all recognize that man has time and again demonstrated a very unique capacity, the capacity to be able to combine different facets of his experience in ways that produce new forms of expression; in ways that produce new solutions to problems, and this ability to use experience, to use imagination, to use the intellect, for invention, for innovation and for creative expression, has played a very major role in the development of the way we all live our lives.

Where individuals in a society invest their time and energy in the use of this talent, this ability, this capacity, to produce something of particular value, it is only just and equitable that they should be rewarded. One way in which individuals can secure returns for their effort is for them to limit the access by others to the essence of their ideas. In many ways it is a kind of monopoly and this type of monopoly can restrict the further development of an idea. If as many people as possible could have access to the details of the idea, the chances for rapid improvement to take place to benefit the wider society may well be increased.

So that there is a balancing in the interests of the wider society that states of developed systems and laws have defined this product of the intellect as intellectual property, and cause to the owners of intellectual property various rights that protect their interests, but on a condition, and the condition is that they make full public disclosure of the ideas.

10.20 a.m.

Basically, we can look at intellectual property rights as being exclusive rights conferred by law to an individual for the product of his intellect, that is, as his intellectual property. Products of the intellect can take many forms. For example, it could be a scientific invention, it could be an industrial design, it could be signs for purely commercial value such as distinguishing trade marks, it could be a trade secret on the one hand or it could take the form of a literary work, an artistic work, a musical work, as in our own country, the calypso and chutney art forms, the pan. I know that reference was made to pan in the other House and it is something that I would come back to. These are the forms in which products of the intellect will manifest themselves.

The intellectual property law attempts to confer on the individual the exclusive right, the monopoly, the rights of exploitation, assignment, transmission and contracting out the creation of his intellect. That is to say, they must be expressed in a legally admissible form and in some cases, they are subject to registration procedures. The individual then gets a monopoly right, an exclusive right. Through the enforcement of these rights the person is able to regulate the use of his creation. For example, his musical work or his invention and he can regulate the commercialization of the product. For example, in a compact disc which contains the work—to put it into simple terms, in the same way that a person may own a car, a house, a piece of land, that is, tangible items of a personal property, a person can have intangible rights to the property, intangible intellectual property. In the same way that the law provides for the protection of personal property such as one's land, car or house and allows one to be able to sell the land, rent out the land, export the motorcar, import the motorcar; in the same way that one has exclusive rights for the distribution, exploitation, assignment, contracting and so forth; in the same way the law confers on the individual in this legislative package, in the intellectual property law framework those exclusive rights to sell, distribute, commercialize and contract out the products of the intellect.

Mr. Vice-President, intellectual property law may be seen as comprising two branches. Today we are dealing with the Bills that relate to one branch of

intellectual property law. There is the intellectual property law known as industrial intellectual property law. All four Bills that are here today deal with industrial intellectual property. There is another Bill, the Trade Marks Bill which will be laid in the House of Representatives today and will, in fact, come to this honourable Senate on another occasion, which is also part of the package dealing with industrial intellectual property. The other branch of intellectual property law is an area that people are most interested in. It has to do with the law relating to copyrights and neighbouring rights. There is also a Bill dealing with copyright and neighbouring rights which will seek to revise our existing Copyright Act. That is in the final stages of drafting.

The package of Bills mentioned, that is, the Patents Bill, the Industrial Designs Bill, the Layout-Designs (Topographies) of Integrated Circuits Bill, the Geographical Indications Bill, the Protection Against Unfair Competition Bill, the Trade Marks Bill and there is another Bill that will come under the protection of plant varieties, all seek to give protection to what is termed "industrial intellectual property". These Bills, when enacted will put in place a legal and administrative framework for the protection of inventions, for the creations in the scientific, technological and industrial fields and also for the protection of distinctive science to distinguish goods or services in commerce. Further, the Bill that we have agreed to debate at the next sitting, that is the Protection Against Unfair Competition Bill, supplements the provisions that are contained in the Bills that are being debated today.

The Protection Against Unfair Competition Bill seeks to create a set of basic rules of honesty and fair dealing in economic competition. It seeks to protect the honest entrepreneur from acts of unfair competition as well as to protect the consuming public from misleading acts and practices in commerce.

The further question which arises would clearly be, why should we protect industrial intellectual property? What are the advantages to Trinidad and Tobago? It is my respectful view that protection of intellectual property cannot be an end in itself. It cannot be an end merely to serve the developed countries—because that is a view that has been expressed, that we are bringing this package of legislation at the behest of the United States and other developed countries. That cannot be the end of all this legislation. In my respectful view, the package of legislation we are seeking to put in place is a means of encouraging creative activity, industrialization, investment and honest trade practices in Trinidad and Tobago.

An industrial property system which protects innovation and creative expression must be recognized as a pre-condition to creating and using new technology such that would boost economic growth and would aid development. A strong system of intellectual property rights is, therefore, indispensable to technological development. It seems as though people in the United States, in Europe and in Japan tend to be more inventive than we in Trinidad and Tobago. It is not because their genes are better than ours; it is not because their schooling or their intelligence is better than ours; it is not because of fate that has happened. It is my respectful view, and I am sure hon. Senators will all agree that human ingenuity and creativity are not dispersed unevenly across the globe—those talents are present in every country, and Trinidad and Tobago is a prime example of creativity and talent. Unfortunately, in some countries including Trinidad and Tobago, the enabling infrastructure of effective intellectual property protection has been missing and this is what my Government is attempting to correct.

The fact that most of the patents are granted to foreigners in developing countries, which is certainly the case in Trinidad and Tobago as well, does not mean that the patent system is only to serve the foreigners. This also occurs in all industrialized countries with Japan and the United States the only exceptions.

In the United States almost half of all granted patents belong to foreigners. The leading industrialized countries like Japan, the United States of America, France, Germany and the United Kingdom introduced patent protection in an era in which they were underdeveloped countries. Subsequently, this status of underdeveloped changed through the import and adoption of foreign technology, as well as the progressive development of home-grown technology. So that any intellectual property system must be such as to create in each country, and, therefore, in ours, a new climate with greater appreciation and a knowledge of intellectual property and the opportunities that it will present. Once this is done, policies and procedures for harvesting inventions will be established by the Government in this country.

What are the benefits for Trinidad and Tobago? Surely, it must be first of all, to enhance the quality of life for all of us in Trinidad and Tobago. If we are doing that in terms of increasing investment, increasing industrialization and increasing international trade, then surely it must also be to provide and to contribute to safety, to comfort and to less poverty, and surely more beauty in this land of ours.

The Government's purpose in enacting this package of legislation of intellectual property is to create, therefore, an environment to encourage people in

Trinidad and Tobago to channel their abundant creative energies into areas that are productive, into areas that are profitable, in ways that will redound to the benefit of the nation as a whole. It is also designed to provide strong protection for the creativity of our people in all areas of human endeavour. It is designed to make a contribution to the national Treasury; it is designed to improve the understanding of the technologies being created and used by other nations; it is designed to improve access to new technology which is making a growing contribution to the lives of people internationally, it is designed to improve the cost of accessing technology and, therefore, making more efficient use of domestic savings for investments; it is designed to encourage a greater investment in the manufacturing sector, to encourage greater research and investment in areas that can be profitably commercialized, it is designed to deepen trade relations in the global market place and at the end of the day, to place Trinidad and Tobago in a favourable position to meet our obligations under international treaties and conventions which have already been acceded to in the area of intellectual property.

10.30 a.m.

To this end, Mr. Vice-President, the Bills that are before this honourable Senate are only a part of the entire package of legislation that deals with intellectual property. As I indicated before, there are other Bills which deal with intellectual property, then there are Bills dealing with the copyright and labouring rights.

Now, how does the package of Bills secure the rights? We are saying that the laws confer the rights on individuals. I have said that in conferring those rights we are seeking to give protection and encourage creativity. But then, how does the package of legislation secure rights?

Firstly, the package of legislation does this by establishing in Part II of the Patents Bill, an intellectual property office. This is a new entity that will be entrusted with responsibility for the administration of all the laws relating to intellectual property, and for the rendering of patent information services to the public. This office will be responsible for keeping a register of patented inventions, industrial designs, layout designs of integrated circuits and trademarks. So, the first thing is the establishment of this intellectual property office.

Secondly, the rights are secured and protected by the package of legislation, by conferring on the individual, the corporation, or whatever entity, property rights with respect to his or its intellectual property, patented invention, registered industrial design, layout design, trademark. That means granting to the

individual, the corporation or the entity, the exclusive rights of exploitation, assignment, transmission and contracting out. That can be found, for example, in Part X of the Patents Bill, where the rights are accorded in law to the individual, to the organisation, to the corporation.

Thirdly, the package of legislation seeks to set up a framework for civil judicial procedures, that is, by making provisions for the individual to seek redress for infringements of his intellectual property by way of civil actions in the High Court, by providing the remedy of an injunction to stop infringements of a right. So take for example, someone's intellectual property right is infringed—somebody is using that person's invention without his authorization; someone is selling it; someone is contracting it out—there is the remedy of an injunction for an immediate stopping of the infringement.

There are provisions to make for harsher remedies available to the judicial authorities, such as ordering the removal of the infringing goods from the market place. There are also provisions for penal procedures and sanctions, which include prison sentences, heavy fines, as well as confiscation, seizure and destruction measures for goods infringing one's intellectual property rights—confiscating, seizing, destroying the goods or the instruments that are used in the commission of the offences of the crimes that are created within the respective pieces of legislation. Part XVII of the Patents Bill deals with penal procedures.

There are other bills which also have provisions relating to penal procedures. So that they create within the legislation, criminal offences for infringement of intellectual property rights, and these infringements are punishable by fine and imprisonment. In some cases, as I said, there is imprisonment of five years or 10 years, and very heavy fines for infringements of rights.

Fourthly, Mr. Vice-President, the projection for scientific, technological and industrial creations, as I indicated before, would be supplemented by the provisions of the Protection Against Unfair Competition Bill so that honest practices will be encouraged. Of course, if there are dishonest practices legal mechanisms can come into place to deal with those. So that the legal framework which the package seeks to put into place secures and protects the intellectual property rights. In addition, there will be further amendments to be made to the Customs Act so as to strengthen enforcement provisions with respect to intellectual property rights, so that, for example, customs services can suspend the import of pirated goods, or those bearing counterfeit trademarks. The Customs Act will also be amended to assist in the enforcement provisions with respect to intellectual property rights.

The Evidence Act will also have amendments that will be brought to the Parliament, again, seeking to give enforcement and to have better enforcement in terms of intellectual property rights.

Mr. Vice-President, basically, the Bills, then, seek to protect the rights, to confer the rights and then to give protection to the rights, to secure the rights by the administrative and legal framework that is being put into place.

If we look more specifically at the Patents Bill, for example, clause 2 defines a patent. And what is a patent? A patent is a title that is granted to protect an invention.

Clause 8 provides what is a patentable invention. It must be something, obviously, that is new. It must involve an inventive step and it must be capable of industrial application.

Like much of our legislation, Mr. Vice-President, the law pertaining to the issuing and administering of patents no longer comfortably meets the requirements and obligations for today's environment of international trade and cooperation, so the Patent Act which was known as the Patents and Designs Act—Act No. 10 of 1900 found in Chapter 82:83 in the laws, based on Ordinance No. 25 of 1867—it is on this law that the Government of Trinidad and Tobago has directed its attention, which has resulted in revision and upgrading of that law and the bringing of this Patents Bill, 1996. What the Patents Bill of 1996 seeks to do then, is to replace the existing law on patents as contained in that Patents and Designs Act, and to introduce a modern patent law. The new law is intended to apply to future patents and application to patents.

The proposed enactment is necessary as a step preparatory to the accomplishment of the twin objectives of providing impetus to scientific and technological development and to the rapid industrial growth of Trinidad and Tobago. As you know, Mr. Vice-President, so heavily dependent this country is on science-based industry in oil, in natural gas and in other fields, that we will have that impetus for scientific and technological development, so as to facilitate rapid industrial growth in Trinidad and Tobago.

This Bill also provides an opportunity for this country as a member of the International Union for the Protection of Industrial Property to secure maximum benefits from being a party to what is known as the Patent Co-operation Treaty of 1970 to which Trinidad and Tobago is a signatory. That International Convention provides means whereby patents can be obtained in any or all of the states which

are signatories on the basis of a single international application which is filed and processed centrally.

Mr. Vice-President, to appreciate the advantages of the modern law which we are seeking to introduce in this Bill, the Patents Bill, we may need to look at the type of patent systems that have generally existed. There are two main types of patent systems which have co-existed internationally. Trinidad and Tobago inherited and maintained the “simple registration” system, that is what our old law deals with. The other main system is called the “full examination” system. The Patents Bill of 1996 is proposing, in essence, that Trinidad and Tobago stops using the simple registration system and that we begin to use what is known as the full examination system. Now, to understand the difference, we need to look at the theory of the patent system.

First of all, the state considers it in the public interest, that technologies of all types should be developed and improved. Secondly, the state considers it in the public interest that the more significant of these advances, called inventions, should be fully disclosed and brought into the public domain to prevent resources from being wasted through duplicated efforts.

10.40 a.m.

A patent system is designed to accomplish both of these objectives, and it does so in the legislation by granting to the person responsible for the invention the opportunity to profit from the application of his intellect through what I have called a monopoly right, within the territory of the state, and they have that monopoly right for a specified number of years, in exchange for and under the conditions that he makes full public disclosure. At the end of the specified number of years this legislative monopoly right ceases, and the invention passes into the public domain. The main difference then, between the simple registration system and the full examination system lies in the presumption of the validity of the information disclosed about the invention. In the simple registration system such as obtains in Trinidad and Tobago up to now, the Government relies upon a declaration by the person applying for the patent to determine the novelty, the ingenuity and the utility of the technological advance being disclosed.

So one can see right away that the person making the application for the patent, makes a declaration and says it is new. One can see the difficulties that could be encountered, because again one is depending on that individual's declaration and oath. If a person disputes the validity of the applicant's declaration

his main recourse would be to litigation. The cost of such action may deter another person from making a valid opposition to the declaration of the individual who made the application. That will also militate against circumstances where the time for completion of due process is beyond the time frame for industrial competitiveness. That is to say, that the time one takes to go through the litigation one might have lost the competitive edge in terms of determining the validity of the invention.

The result is that under this present system, the disclosed information cannot be presumed to be valid by the public. The public, therefore, whilst there is a declaration that there is a presumption of the validity, the extent to which one can rely on that presumption is obviously going to be limited because it is based on the declaration of the applicant himself or herself.

The implication of this—one implication—is that there is a higher cost of acquiring new technology and therefore a consequent lowering of the competitiveness of investors and entrepreneurs operating under such a system in a given country and therefore in Trinidad and Tobago.

Now, on the other hand, the law that we are seeking to put into place, the full examination system, it is the state that determines through its own resources the validity of the information provided by the applicant. It does that by ensuring as far as is feasible, that the invention, the technological advance which the applicant brings in, meets the criteria of novelty, inventiveness and industrial applicability, before it awards a patent.

So the law as it stands is that the applicant comes and says, “this is my invention; this is the new advance; here is my declaration that it is so”, and he registers that. In the full examination system it is the state that goes through the examination of the invention, of the document, of the design, of whatever it may be, as far as is possible and as far as is feasible and then grants the patent. That is to say the state determines that it is valid.

So we see that the presumption of the validity of the invention, of the layout design or whatever item of intellectual property, there will be a higher level in terms of dependence, or reliance on, the validity of the information that is disclosed. For the state to do this, it must have reasonable access to information on the state of the art in a wide range of technological areas, it must also use personnel acquainted with the level of skills in each of these areas, and it must have an understanding of how these skills can be applied in practice. The state, therefore, applying its resources in this way, allows the public the fair presumption

that the information thus made available to it is valid, and therefore saving much time and money and also improving the competitiveness of entrepreneurs operating within this territory.

The international community, unlike Trinidad and Tobago, recognized the advantages of the full examination system and in 1970 they established the Patent Co-operation Treaty. This treaty essentially provides its members—and Trinidad and Tobago is a signatory to that treaty—with access to a search and examination system that would be acceptable to its members in terms of the presumption of validity. While it does that, it does not remove the sovereign rights of member states to grant new patents. That discretion and that right remains with each member state and is embodied in the laws. So that with the full examination system we would have the benefit of being a member of the Patent Co-operation Treaty—186 states are members of the Patent Co-operation Treaty, so that we would have that advantage as well being a member of that treaty with the other 185 states—and we can have mutual assistance internationally in terms of examination of our documents.

I said it in the other House—and I have no difficulty in saying it here today—that the past administration did take steps with respect to intellectual property legislation, and obviously recognizing the advantages of the full examination system in 1984, hired an international consultant to help draft a new patents bill. The work of that international consultant resulted in what is known as the 1988 Patents Bill, which made the first major changes to patents in this country. In 1988, Trinidad and Tobago became a member of the Paris Convention—another treaty—and before the 1988 bill was introduced into the Parliament, there were a number of initiatives taking place across the world.

In 1993, internationally, there was what is known as the Uruguay Round of the General Agreement on Trade and Tariff—commonly referred to as GATT—and that included significant discussions on trade related aspects of intellectual property rights. So internationally the discussions in GATT were going on, whereas locally the Government was pursuing something known as a Bilateral Trade Agreement with the United States as a hopeful precursor to entry into the North American Free Trade Alliance. Eventually, those discussions and negotiations resulted in a Memorandum of Understanding between the United States and Trinidad and Tobago which had significant implications for the intellectual property legislation in this country.

There was another international agreement known as the TRIPS Agreement dealing with trade related aspects of intellectual property legislation which was acceded to by Trinidad and Tobago on April 15, 1994. Thereafter, the bilateral agreement with the United States was signed by Trinidad and Tobago on September 26, 1994. But before these agreements were actually signed, the local Chamber of Industry and Commerce, obviously aware of the implications for the trading position of our people in Trinidad and Tobago and of their members, set up a committee to review the legislation on intellectual property and that committee was known as the Ad hoc Committee to review intellectual property legislation.

Mr. Vice-President permit me to mention the Members of that Committee because we would be really neglecting in our duties if we failed to pay tribute to the many persons who have been instrumental and who have worked unstintingly, giving their time, night and day, freely, voluntarily, to bring this legislation to the Parliament. I cannot stand in this honourable Senate and fail to pay tribute to those persons.

There was this group known as the Ad Hoc Committee—and I ask this hon. Senate, to join with me in thanking these members: Mr. Brian De Gannes, attorney-at-law, Chairman of the Ad Hoc Committee on Intellectual Property Law; Ms. Nazina Kadir, Assistant Registrar in the Intellectual Property Registry, also an attorney-at-law; Mrs. Debra Day, who was the secretary of that Committee, attorney-at-law; Ms. Wendy Fae-Thompson; Mrs. Olive Ramchand; Mrs. Christine Ragoobar; Mrs. Helen Ross-Dick and Mr. Llewelyn Mc.Intosh who was from the Copyright Organization, and, of course, Mr. Malcolm Spence who is attached to our Intellectual Property Registry.

10.50 a.m.

As I said, they have been working from 1984, and today, in 1996, they are still working; some of them are with us in the Chamber today, Mr. Vice-President.

The former Attorney General requested the Ad Hoc Committee to advise him in this area specifically with respect to the revision of the Patents Bill. The committee envisaged that there would be a wider range than just the patents law which they would need to revise, and that is, all the international property rights legislation. They expanded that committee and they continued to sit and to look at other intellectual property legislation. What they also did was to set up committees to deal specifically with the Patents Bill.

Again, Mr. Vice-President, I would like to mention the names of those persons who served on the committee dealing with the Patents Bill. There were three sub-

committees which were the Legal Committee, the Administrative Committee and the Technical Committee.

The members of the Legal Committee were Mrs. Olive Ramchand, an attorney-at-law, Chairman; Dr. Weston Bartholomew, Advisor, from the Inventors Association; Mr. Baine, who was President of the Inventors Association; Mr. Anthony Vierra, attorney-at-law; Mr. Brian De Gannes, attorney-at-law, and Ms. Nazina Kadir, Intellectual Property Registry, Assistant Registrar.

The Administrative Committee was chaired by Ms. Kadir and the members were: Mr. Weston Bartholomew from the Inventors Association; Mr. Baine from the Inventors Association; Mr. Sandy who is the Assistant Registrar at the Companies Registry from the Registrar General's Department. There was a representative from the O&M Division, office of the Prime Minister; Mrs. Carmina Baird who was a representative of the Chamber of Industry and Commerce.

The Technical Committee comprised as Chairman, Dr. Narine from NIHERST; Mrs. Primus also from NIHERST. There was a representative from CARIRI; Dr. Charles from the Engineering Association of Trinidad and Tobago, and there was a representative from ECLAC and the Faculty of Natural Sciences.

There was a Trademark Reform Committee as well, Mr. Vice-President, of which Mr. Brian De Gannes was the Chairman; Mr. Clyde Byer from the Registrar General's Department; Mrs. Olive Ramchand an attorney, Mrs. Helen Ross-Dick attorney; a representative from Hamel-Smith and Company; Ms. Kadir and Mrs. Carmina. These committees have been meeting and working over the years.

When we came into office, we continued to work with them and we set up a committee known as the Intellectual Property Bill Committee of which there were members from the Law Commission, including Mr. Justice Persaud, Chairman of the Law Commission, in addition to Mr. De Gannes, and Mr. Bhagowtee from the Law Revision Department; Mr. Macintyre and Mrs. Greene from the CPC's Department; Mr. Spence and Ms. Kadir from the Registrar General's Department. They have continued to work with us. And as I said before, the work they have done in the last few months has allowed us to be able to bring the package of legislation in time to meet our international obligations. In order to fulfil our international obligations, we would want to enact these laws and implement them before September 26, 1996.

So the members of these committees in consultation with and the assistance of the Board of Intellectual Property Organization, in 1993, presented the former

Attorney General, with what became known as the Patents Bill, 1994. So we had the 1988 and then the 1994 Bills. The World Intellectual Property Organization continued to work. Before the Bill could be brought into Parliament, Trinidad and Tobago acceded to the Patents Co-operation Treaty in 1994 as well. The Law Commission again requested the Ad Hoc Committee, the WIPC (World Intellectual Property Committee), the Legal Drafting Department and the Law Commission, to get together again to revise the legislation, because all these new treaties had been acceded to and we had to see what effect they would have in terms of the legislation that we had to bring.

So that the view that we are rushing the legislation through and that we are doing it in haste and therefore we would be tripping up ourselves and making tremendous mistakes is contrary to the facts. Mr. Vice-President, I have taken the time to go through the history of the legislation which is now before this Senate, that is to say, starting from 1984 and ending with the Patents Bill 1996, the Industrial Designs Bill, 1996, the Design-Layout (Topographies) of Integrated Circuits Bill, 1996, the Geographical Indications Bill, 1996, the Unfair Competition Bill, 1996 and the Trademarks Bill that will soon come. These Bills have been the result of years of work by people from different and relevant fields, in consultation, and pooling their expertise.

Mr. Vice-President, we also need to pay special tribute to the World Intellectual Property Organization. They have sent several missions here; they have sent their drafters to assist our drafters, and they continue to assist us in terms of strengthening and modernizing the Intellectual Property Registry and what is to become the Intellectual Property Office.

Mr. Vice-President, clauses 3, 4 and 5 of the Patents Bill establish the Property Intellectual Office. As I said, that will be the entity responsible for the administration of all the laws pertaining to intellectual property and to give patent information services to the public. Further, in Part I of the Patents Bill, staffing is set out to deal with the strengthening of this Intellectual Property Office.

Clause 6 reflects the highly confidential nature of the information which comes by way of employees who would be working in the Intellectual Property Office when they are discharging their official duties. Provisions are made to debar them from using this information for personal gain, and they are expected to be impartial and trustworthy, but it is not just an expectation.

In order to inspire the confidence of the public, the legislation imposes restrictions on the personal utilization of the facilities of the office, including a

permanent obligation of secrecy on the part of the staff with regard to the passing on of confidential information which may come to their knowledge in their official capacity in the Intellectual Property Office.

Now, this is important because remember, what people will be bringing in will be what they consider to be their inventions, their advances and new things. So that one would need to have staffing and provisions to prevent the staff from using this information before patenting the idea, taking it and running it off as their own elsewhere. We need to have a very high level of confidentiality in that office.

11.00 a.m.

Clause 7 of the Patents Bill affirms the rule of natural justice by affording a party aggrieved by the exercise by the Controller who has a discretionary power, of the opportunity of being heard. That is to say, if someone brings a patent application or invention to be registered and the Controller of the Intellectual Property Office decides it is not patentable, the person who is aggrieved can say, "No, that cannot be so. This is something new. I need to have this looked at." Instead of having to go to litigation right away, one has an opportunity to be heard and the provisions with respect to those rules of natural justice are contained in clause 7 of this Bill.

Clauses 8 to 12 in Part IV of the Bill set out the substantive law on patentability. Clause 8, for example, sets out the three basic requirements in order for something to obtain a patent, that is to say, novelty, inventive step and industrial application. The concepts are dealt with in detail in clauses 9, 10 and 11 respectively. Clauses 8 to 12 and later on, clause 24 of the Patents Bill, outline briefly the expected functions of the patent examiners.

You will recall, Mr. Vice-President, that I spoke about the full examination procedure so that these clauses set out the functions of the examiners, the persons who will be examining the documents, the application made and the particular item that is sought to be patented.

Now, examining for novelty obviously will require access to very up-to-date information. Examining for an inventive step defines the caliber and prior training required of the patent examiner. Examining for industrial applicability suggests a level of experience previously attained. For example, in the German Patent Office, their examiners are required to have the equivalent of a Master's in Science in a relevant technical subject and they must have a minimum of five years experience working in industry. They have to undergo a minimum of 18 months supervised in-house training as a patent examiner. So that these concerns in terms of staffing of

the Intellectual Property Office will definitely have to be addressed for proper implementation of the legislation.

Now, although the Patents Bill addresses primarily the administration of patents, we must bear in mind that the Intellectual Property Office which is being established will be required to administer all other areas of intellectual property, particularly in the first instance, trademarks, service marks, industrial designs and so on, and the examination of these would require very high levels of specialist training, tertiary level qualifications, but more important, in-house training as well. The controllers themselves will be expected to take decisions, as I pointed out, which may be considered to be of a traditional nature, that is to decide whether to give a patent title or not to give a patent title. They must have good grounding in the practice of the law; normally they must be called to the bar; they must have a level of experience in intellectual property and they must have considerable experience for a couple of years. So that the staffing, I am saying, is also very crucial to the implementation and proper functioning of that Intellectual Property Office.

Government at this time is awaiting the passage of the legislation in Parliament because we cannot be premature and pre-empt the Parliament, so that we have drafted and taken to the Cabinet the staffing requirements of the new Intellectual Property Office, but of course, the Cabinet as I said, will not pre-empt the Parliament, therefore Cabinet is awaiting the outcome of the passage of the legislation before giving the go-ahead in terms of the staffing requirements of the Intellectual Property Office.

Part V of the Patents Bill deals with the right of persons, including a natural person, of course, but also corporations and unincorporated bodies of persons, to apply for and obtain a patent.

Part VI deals with the making of an application for a patent on a prescribed form, payment of fees, formalities of examinations, search and substantive examination of the application and the result will be the refusal or the granting of the patent.

Clause 29 begins to suggest a greater volume of accounting activity to manage a new fee structure. This is later supported by clause 87 which requires the Controller to submit an annual report and very significantly, that annual report must be laid in Parliament. It will contain an audited account of moneys received

and paid to the Intellectual Property Office. Now the payment of moneys is a new function that is of particular importance. Under the obligations to the Patent Cooperation Treaty, the Intellectual Property Office will be obliged to transfer moneys to the international bureau of the World Intellectual Property Organization. We will also have to do so to the International Search and Examination Authority selected by the applicant in a timely manner to ensure his property rights.

So that the new fee structure envisages and we expect an increase in revenues to the state from the new intellectual property system. The many new services that will be offered, therefore, at the end of the day, can pay for themselves and for the new infrastructure.

Mr. Vice-President, it is my respectful view that the Patents Bill and the other Bills in the package are significant for the improvement in the attractiveness of Trinidad and Tobago as an investment location. This package of legislation is a requirement for the deepening of trade relations in the global market place; these Bills will improve a system that is self-sustaining and that makes a contribution to the national Treasury; these Bills will improve the cost of accessing technology and making more efficient use of domestic, creative energies allowing for savings for investment; these Bills will allow for improved understanding of the technologies being created by other nations. They will allow greater investment in the manufacturing sector; they will encourage greater research and development investment in areas which we can profitably commercialize and, as I pointed out, they are the result of wide consultation over a period of many years with interest groups with respect to intellectual property.

Mr. Vice-President, with respect to the specific provisions of each of the Bills, I will ask honourable Senators if they have specific issues of concerns in relation to any of them, I will be very happy to deal with those when I wind up the debate as necessary.

Mr. Vice-President, I commend the package of legislation to this honourable Senate.

Question proposed.

11.10 a.m.

Sen. Nafeesa Mohammed: Mr. Vice-President, I would begin my contribution by expressing my happiness at the opening statement by the hon. Minister of Legal Affairs in her presentation of this package of legislation before us here this morning, when she made reference to the fact that at the last sitting of the

Lower House, the honourable Prime Minister was seen in Parliament with his lap top computer. We on this side, are indeed very happy to know that we, too, can avail ourselves of such facilities.

I would also like to commend the hon. Minister for the enthusiasm that she has been showing over this package of legislation in the last few days. I recall seeing her on television just about two nights ago. The hon. Minister of Public Administration and Information, I am sure, would be very much aware of what arrangements were made, and it was, indeed, very interesting to listen to her comments on these Bills. She has a very up-beat position with respect to the package of legislation.

I was even more pleased to sit here this morning and actually hear the hon. Minister give credit where credit is due. Initially, in her presentation, I heard comments like—if I may just refer to some of the comments made by the hon. Minister earlier—this package of legislation is "our package to reform the law on intellectual property". I heard it being said about "my Government's attempts at redressing some of the problems associated with intellectual property." It had me concerned for a while, but at the end of her contribution she did recognize the efforts that were, in fact, being made way back to 1984 when an international consultant had been brought into the country to assist with the drafting of a Patents Bill.

We heard that this particular effort led to a draft bill in 1988, but it was really in the early 1990s that these efforts at reforming our intellectual property legislation took off. We all know that with the PNM administration in government, as early as 1992, with respect to the economic policies that were being put in place at that time, there were certain treaties and conventions which our country entered into. We heard mention being made of several other treaties, the 1970 Patents Co-operation Treaty of which Trinidad and Tobago has been a signatory. We have also been a party to the 1883 Paris Convention. There was the 1977 Budapest Treaty on the International Recognition of the Deposit of Micro-organisms; there was the 1886 Berne Convention for the protection of literary and artistic works. Reference was made, as well, to the fact that this whole package dealing with intellectual property rights really comes in two parts. One of the parts mentioned was the area of copyright legislation. We would recall that in 1985 the PNM administration had enacted a Copyrights Act, dealing particularly with literary and artistic works. We also heard about the Uruguay Round of GATT that took place in

1993, and the Trade Related Intellectual Property Rights Agreement which arose out of the GATT. That Agreement can really be regarded as the impetus for this package of legislation that we are looking at here today.

As early as the middle of 1992, there had been a study of our laws regarding intellectual property rights. That was something which was prepared for the Inter-American Development Bank by a special agency. We heard as well about the efforts of the Chamber of Commerce and I think their efforts would have been around 1993 when they appointed the Ad Hoc Committee to review the laws on intellectual property in Trinidad and Tobago. We heard reference being made to the fact that a former Attorney General, and I do not mean our present Minister of Legal Affairs who is also a former Attorney General of Trinidad and Tobago and whose removal I am yet to understand.*[Interruption]*

As I was saying, the then Attorney General requested the assistance of this Ad Hoc Committee with respect to the examination of our intellectual property legislation. I was very pleased to hear the hon. Minister refer to the members of that Ad Hoc Committee, and more particularly, the sub-committees that existed with respect to the patents legislation. I think she referred to all the members who were involved, and we, on this side, would also like to commend all members of the Ad Hoc Committee for the hard work that they have been doing with respect to this package of legislation that we are looking at here today.

I believe it was in July of 1993, expert assistance was sought from the World Intellectual Property Organization. I have in my hand here a brochure prepared by the World Intellectual Property Organization and I would just like to quote two paragraphs from page 8 of this brochure—general information on WIPO. It states:

"Intellectual property comprises two main branches: *industrial property*, chiefly in inventions, trademarks and industrial designs, and *copyright*, chiefly in literary, musical, artistic, photographic and audiovisual works.

As to the promotion of the protection of intellectual property throughout the world, WIPO encourages the conclusion of new international treaties and the modernization of national legislations; it gives technical assistance to developing countries; it assembles and disseminates information; it maintains services for facilitating the obtaining of protection of inventions, marks and industrial designs for which protection in several countries is desired and promotes other administrative cooperation among member States."

We have been very fortunate to have the assistance of this World Intellectual Property Organization. I came across a copy of an advertisement as far back a October 6, 1993, by the IADB requesting letters of interest for consultancy assignments pertaining to intellectual property rights, amongst other things. This was published in the *Trinidad Guardian*. This request would have come about as a result of the negotiations that were taking place with respect to the IADB loan, and particularly the investment sector loan that was then being negotiated.

Then in January 1994, WIPO prepared a project document with respect to intellectual property legislation in Trinidad and Tobago. In fact, efforts were made to have local inputs with respect to this project document.

11.20 a.m.

I also came across the itinerary for a National Awareness Seminar on Patent Law and the Patent Co-operation Treaty which took place between April 14 and 15, 1994. If I may just refer to some of the participants in this particular seminar. The Chairman of that seminar was Mr. Justice Guya Persaud, who is the Chairman of the Law Commission. The feature address was delivered by our former Attorney General, Mr. Keith Sobion. Presentations were made by the Chairman of the Ad Hoc Committee, Mr. Brian De Gannes; Dr. Bramha Narine from NIHERST chaired one of the sessions. There were contributions by specialists in the field who came to assist us from abroad; Dr. Busso Bartels, Head of the Legal Division, Patent Cooperation Treaty, World Intellectual Property Organization and Miss Isabelle Boutillon, Senior Legal Advisor, Legal Division, World Intellectual Property Organization.

I have referred to these names merely to indicate and highlight the kind of work that has been done with respect to the reform of our intellectual property legislation over the past few years and the kind of inputs we have had from highly trained and skilled specialists in the field.

My information is that since the middle of 1995 there were draft layouts of the Patents Bill and Layout-Designs (Topographies) Bill already prepared. It is a fact that a great deal was being done under the former administration and I commend this Government for continuing with our efforts with respect to the intellectual property legislation package that is before us in the Senate Chamber this morning. I am truly amazed that some Senators who are now holding very senior ministerial portfolio were on this side of the Senate Chamber, it is well known that they, in those early years, objected and commented persistently about the economic

policies that the PNM Government was pursuing. It is amazing to see now that they are on the other side they have finally come to terms and realize what really is happening in the world; the economic changes that are necessary to keep up with the global trends.

I am sure the hon. Minister of Public Information knows what I am talking about. *Hansard* is there to bear testimony. I notice he is very quiet. For the past eight months I cannot believe this is the same Sen. Wade Mark whom I used to read and hear so much of prior to November, 1995. There has been some radical transformation. We really have to wonder what is happening. I know he was head of a very popular trade union in the country. I was really amused when looking at television I heard talk about privatizing the postal services in Trinidad and Tobago. This whole concept of privatization is something that was very much frowned upon by elements in the society. Look at the Severn Trent agreement! A classic example which we dealt with in the Senate some months ago. They condemned the Severn Trent agreement so much and yet, as soon as they came into office, they went ahead. Although they tried to give the impression about reform and assistance for poor people and pensioners, yet a group of pensioners came to me a few months ago showing me bills where their rates were increased from \$100.00 to \$1,000.00.

Mr. Vice-President, we really have to wonder. It is a coalition Government of public relations that is running this country right now. The hon. Minister of Finance will know very well what I am talking about especially in light of recent developments that are taking place in the financial sector.

Quite apart from that, I had to make reference to it. I was really amused because we are not talking *[Interruption]* This is very relevant to the Bill. These Bills are pursuant to the bilateral agreement that was signed with the United States of America. As the hon. Minister mentioned, it is a next stage in the Nafta—

Mrs. Persad-Bissessar: Thank you for giving way hon. Senator. Is the hon. Senator aware that by signing that bilateral agreement with the United States the former government has placed Trinidad and Tobago in a worse position in the sense of forcing us to have to rush to get the legislation enacted by September? We had five years but with that agreement their administration put the country in a position to do it in two years—and they did not do it in the two years.

Sen. N. Mohammed: Mr. Vice-President, I am really amazed at the hon. Minister's comment. Just a while ago she denied having to rush this legislation

through Parliament. I really have to wonder what she is talking about. We are talking about the changes that have been taking place economically.

I want to refer to an article in the *Daily Express*, “Union up in arms against Caroni retrenchment plan.” It is very relevant, and I will show how it is relevant. This article published on July 8, 1996 in the *Daily Express* at page 5, said:

“The All Trinidad and General Workers Trade Union’s political friendship with Prime Minister Basdeo Panday will not deter it from fighting Caroni Limited’s plan to close down two sections of the company, according to acting President General of the union, Mr. Boysie Moore Jones.

Jones said that the union was against the plan to retrench more than 700 Caroni employees and set them up as independent cane farmers.”

Many Senators of this honourable Chamber will recall when the budget was being debated I made the point that there were certain conditionalities attached to the Agricultural Sector Loan Agreement—and I am sure the hon. Minister of Finance will agree with me—and one of the conditionalities dealt with the state enterprises in the agricultural sector, particularly, Caroni Limited.

I just want to refer to a page because it is now public information. We got a document in our package just this morning, *Rationalization of State Owned Enterprises*. I am reading from an agreement signed by the hon. Minister of Agriculture, Land and Marine Resources, Dr. Reeza Mohammed, just a few days ago. The document says:

“This will involve assisting the management of Caroni Sugar Estate to: (a) fully implement the Tripartite Agreement which will lead to a reduction in production losses, a reduction in employment...”

The Tripartite Agreement is an agreement with respect to Caroni (1975) Limited which the Prime Minister who was then and still is, I believe, the leader of the All Trinidad Sugar and General Workers Trade Union signed and he is a party to that Tripartite Agreement and under the terms of that agreement, more than 700 workers have to be laid off, and that is a fact.

I have made reference to these developments because when they were on this side they said so much about the economic policies and now they have no choice, they have to continue with these economic policies. They are a reflection of the

times in which we live, we are a part of the world and we have to keep up with the trends in the world. That is why this package of legislation is so very important.

I go now to the Patents Bill. In the hon. Minister of Legal Affairs' presentation, it took her a very long while to get to the actual Bill.

Sen. Mark: Were you following?

11.30 a.m.

Sen. N. Mohammed: Of course, I was following. You do not worry.

Mr. Vice-President, as I was saying, with respect to the Patents Bill—we are hearing so much about patents, but we have to ask the question what really is the meaning of patents? In this document that I had just now from the World Intellectual Property Organization, there is a very interesting definition at page 14, where it says:

“A Patent is a document issued by a government office, which describes the invention and creates a legal situation in which the patented invention can normally only be exploited, made, used, sold, imported with the authorization of the patentee.

Protections of inventions is limited in time generally 20 years from the filing date.”

When we look at the Explanatory Note with respect to the Patents Bill, we see in the first paragraph at page 2, that this Bill seeks to replace the existing law on patents contained in the Patents and Designs Act, Chap. 82:83, by a modern patents law, and the hon. Minister made mention of our existing patents law in Trinidad and Tobago. It goes way back to the turn of this century. It is really out-dated, and this is why this Patents Bill is so very important, to keep up with the times, to modernize the law relating to patents.

Mr. Vice-President, all Members in the Senate here will agree that these Bills are very technical and complicated pieces of legislation. In the other place, a suggestion was made that perhaps a select committee should be appointed to deal with them in a more detailed way, and I, too, make that call, because, certainly, I do not have the requisite expertise in this particular field. However, we have an obligation and a duty to fulfil and unless we hear otherwise, in the meanwhile, I want to express my concerns with respect to Part II of the Bill. It is unfortunate that the hon. Minister just stepped out, because I really would have liked to get

some information. I would read clause 3 which deals with the Intellectual Property Office. It says:

- “(1) There shall be an office to be known as the Intellectual Property Office.
- (2) There shall be a Controller in charge of the Intellectual Property Office who shall have the responsibility for the administration of all laws relating to intellectual property, and who shall exercise the powers and perform the functions conferred by and under this Act, and by and under any law.
- (3) There shall be appointed such number of Deputy or Assistant Controllers and other officers as are considered necessary.
- (4) The officers of the Controller, Deputy Controller and Assistant Controller, are prescribed as public offices for the purpose of section 111(4) of the Constitution”

Now, my concern with this particular clause of the Patents Bill, Mr. Vice-President, is in respect to the appointment of a controller. I am quite anxious to know what qualifications are required for the appointment of a controller, and I certainly urge the Government to look at this particular measure. I suggest, that this particular office be open to professionals from different fields, be it an attorney-at-law, scientist, engineer, economist. It is an administrative role which the Controller has to perform and we know there are certain legal aspects that would be associated with it. I wish there was more clarification in the actual Bill with respect to the qualifications that are necessary for the appointment of a controller. I would also like to know how far the Government has gone with respect to the recruitment of such a key person in the setting up of this new Intellectual Property Office.

My other concern with respect to this part of the legislation, Mr. Vice-President, is in respect of the location of the Intellectual Property Office. I recall just a few years ago, maybe three or four years ago—I see Mrs. Nazina Kadir in the chamber here with us, and I recall the days when the Companies Registry operated higher up on Frederick Street—they eventually moved to the Singer building, just opposite Woodford Square on Frederick Street. I have been there a few times and I am a bit concerned about the accommodation in that building.

I am assuming here, that the Intellectual Property Office will be housed at the Companies Registry. We have not been made aware of any plans to set up an office anywhere else, but we all know that intellectual property legislation is designed to attract investors, and many foreigners would be here, and certainly we would like to see accommodation that is comfortable.

Quite apart from that, Mr. Vice-President, if we are dealing with an Intellectual Property Office, we may wish to go there to get information, to research some matter and we would like to know that there are facilities available—desks, chairs, and so forth—comfortable environment for the operations of the Intellectual Property Office.

Another concern that we have with respect to this particular piece of legislation—and I am looking here at the infrastructure that is in place or that is being put in place for the implementation of these measures—is in respect of whether there are computer systems being put in place. We know that to access information with the rapid technological development that has been taking place in the world, we would expect that an office being set up for purposes of housing an intellectual property registry will be fully computerized and operating in a very efficient and modern way. I know that under the former administration, steps were being taken to computerize and certain registries within the legal department of the Government had been computerized and I am sure the Companies Registry had benefited from the changes that were taking place under the whole public sector reform programme that was going on at the time.

Mr. Vice-President, we await word from the Minister of Legal Affairs with respect to the location of this Intellectual Property Office. It is going to be a very important office and therefore we are curious to know where it would be located and what facilities would be available and what kind of equipment would be there. Most importantly, the staff who will be working in that office, we expect that they will be properly trained personnel.

11.40 a.m.

I am sure all Members will appreciate it is really a very specialized area, it is very technical, it deals not only with laws and legal issues, it deals with science and technology. So we need to have a good blend of human resource personnel who will be manning this particular office, if it is to live up to the ideals and the objectives of this whole package of legislation.

Mr. Vice-President, another clause in the Bill that attracted me was clause 7. It is indeed very refreshing to see an actual codification of a basic tenet of the principles of natural justice, that is the right to be heard. Under clause 7 of this Bill there is that opportunity to be heard in the event of any adverse action.

Mr. Vice-President, clause 15 of the Bill is also of interest to me in that it deals with a situation where an employee may have come up with an invention. What would be the position? Would the right to that invention belong to the employee or the employer? It is good to see that in clause 15 (4) employees are afforded some protection. If I may read this particular clause, it says:

“For the avoidance of doubt, it is hereby declared that when an invention is made by an employee whose contract of employment does not require him to engage in inventive activity, or in a field of activity different to that of his employer and without using information or means put at his disposal by the employer, the right to the patent for such invention shall accrue to the employee.”

So that is a very useful provision that will protect some employees.

Mr. Vice-President, Part VI of the Bill deals with application for patents and it sets out the requirement particularly with respect to disclosure. Then Part XII deals with the whole question of infringement and the remedies that are available. One can seek an injunction, seek damages and what have you. This, of course, touches upon the whole issue pertaining to the administration of justice and the problems that we, in Trinidad and Tobago, have with respect to delays in the administration of justice.

More than once in this honourable Chamber, I have gone to great lengths to remind the hon. Members of efforts that were being made under the former administration with respect to speeding up the administration of justice and we all know we have a very dynamic Chief Justice, as well, who has been playing a significant role. Only today I read in the newspapers where history was created, where an appeal was actually heard in the Court of Appeal in three months' time.

So, Mr. Vice-President, all of these are developments which have been taking place over the last few years. Just to reiterate my concerns, particularly with respect to this Bill, we know it is technical. It is impossible to go through the Bill clause by clause. We, on this side, also call for a select committee to be set up to deal with these Bills. But my major concern is with respect to the implication of the provisions of the Bills. We are certainly anxious to hear from the hon. Minister with respect to the status of the recruitment exercise. What steps are being taken

to recruit appropriate staff for the Intellectual Property Office; the position regarding funding for setting up the necessary infrastructure to have an efficiently run administration office? What measures are in place for the training of staff, the equipment of the office?

In conclusion, Mr. Vice-President, with respect to the Patents Bill, we, on this side, welcome the piece of legislation that is before us today. It is timely, it is a continuation of our work and we agree with the principles of the various Bills. In fact, I may go so far to say that this whole package is a continuation of our world-class vision for Trinidad and Tobago.

You will recall the whole city development that was in place to make Port of Spain a world-class city. I see the hon. Minister of Works laughing and I wonder why, because when I see the very large swimming pool on Abercromby Street that would have housed the National Library, especially with respect to this debate that is taking place, I really have to express regret once again that they scrapped that project, because the kind of information, technology and facilities that would have been available, would have gone hand in hand with the changes being made with respect to the intellectual property rights in Trinidad and Tobago and the infrastructural work that we were putting in place.

Mr. Vice-President, the ACS, the building, all these were efforts towards making Trinidad and Tobago a centre for investment, a centre for trade. It is symptomatic that they come here and continue to fudge our ideas and I really would like to see if there is any provision under which we can take action against this Government for coming in here time and time again and regurgitating our works and our policies as though they are theirs. Maybe the Copyright Bill that is in the making would deal with that.

As the hon. Minister of Legal Affairs pointed out, the measures before us are a package dealing with intellectual property. The Industrial Designs Bill is another of the Bills which we support. We expect that some of our businessmen would have to buckle their belts now. There is the Layout-Designs (Topographies) of Integrated Circuits Bill dealing with electronic technical advancement. This Bill is necessary especially in this computer age. We welcome this Bill and we support it as well.

The Geographical Indications Bill of 1996 is certainly of great interest to me. I know the hon. Minister of Works and Transport is in a very good mood. This is the first time I have heard his voice in months in this Senate. He should really be the last person to be laughing.

11.50 a.m.

Mr. Vice-President, I refer to clause 3 of this Geographical Indications Bill which provides for the institutions of civil proceedings to prevent the use of geographical indications. I said this Bill is of interest to me because only two days ago I heard about a particular company operating from the southland that has been involved in the importation of pasta from a particular part of the world—I believe it is China. I was hoping to get a packet of the pasta; it is macaroni, I think. With respect to that particular company, I am told that after these products are imported, they are repackaged and they are sold as though they were manufactured right here in Trinidad and Tobago. I do not know the name of the company, but I know some of them deal with agricultural equipment and so on, so I do not know if there might be any other company that another Member of the Government may be aware of.

This is a matter which I hope the Government will take note of because with respect to this particular Bill, I am very concerned about what machinery is being put in place to properly investigate and examine products and their origin. This is something that is very much needed with respect to this Geographical Indications Bill.

Mr. Vice-President, before I take my seat, I happened to come across this document again last night and when I looked through it there was nothing on trade, or the Government's vision or policy, yet they come here and talk as though they are the innovators. Mr. Vice-President, once again, we applaud them for continuing with our work. I certainly commend the hon. Minister of Legal Affairs for her enthusiasm in bringing these Bills to Parliament. It is very good to see that she is getting back on her feet again. We wish her well.

I thank you, Mr. Vice-President.

Sen. Prof. John Spence: Mr. Vice-President, I think it is extremely important that these Bills have come to Parliament. Like the previous speaker, I congratulate the Government for having brought them, whether it be the work of this Government or previous governments.

However, I have to agree with the hon. Minister when she made the point that part of our difficulty is the fact that the signing of the Intellectual Property Agreement with the United States has shortened the period that we need to consider these measures from five years to two. At the time when this signing was

carried out, I myself made the comment that it was an unfortunate development. What is ironic is that at that time it was in preparation for joining NAFTA. Of course, NAFTA has gone by the board; no country seems to be interested in NAFTA anymore; they now seem to be interested in the Organization of American States.

I have tried to address this package of Bills by going back to the TRIPS Agreement—that is an agreement which followed GATT—to deal with intellectual property. I thank the hon. Minister for letting me have a copy of this. Indeed, I really think that if we are going to consider these Bills effectively, we should have had both the TRIPS Agreement and the Agreement on Intellectual Property of the United States circulated earlier so we would have been able to look at these together.

I do not take the hon. Minister's point that because there had been a thorough development of these ideas over the last 10 years or whatever it is, that means that we in Parliament must just rubber stamp the efforts of these previous persons. In the final analysis, we would take the blame if the Bills go wrong because the persons who have prepared them to this stage have not got the responsibility of actually enacting them into law. I agree with Sen. Mohammed that the correct approach to these Bills should have been to refer them to a select committee. I still suggest that even though I know it is not going to occur.

If one looks at the Companies Bill, much work went into the preparation of that Bill, but at the end it was essential to refer it to a select committee, and I gather that even now, having gone through a select committee and being passed in Parliament, much work needs to be done before it will be effective in modernizing our system. That is an example very similar to this in which in order to be global we have to modernize our companies law, and in this case we have to modernize our intellectual property law. It is the duty of persons like myself to suggest that we refer it to a select committee even though I understand the problems of so doing.

As I said, Mr. Vice-President, I have to go through the TRIPS Agreement to see whether, indeed, the measures that we need to put in place are in the Bill, but more importantly, whether the measures that we can use to our best advantage are being put into the Bill.

One of the problems which I have with the way we are approaching this intellectual property legislation is that I do not quite see how one can adopt these measures without having in place a science and technology policy. If we look at

the introduction to the Bill—I think the Minister may have referred to this but let me just read from the Explanatory Note. The reasons for this Bill as stated in the Bill itself are as follows:

“...the twin objectives of providing impetus to scientific and technological development and to the rapid industrial growth of Trinidad and Tobago...”

It goes on to say that we depend on “science-based industry in oil and other fields”.

So clearly, the intention of the Bill is to move us forward in those areas of scientific and technological development which will lead to better industry and so forth. But if we do not have a science and technology policy, how can we judge what measures are being put in place to deal with intellectual property? I think one of the problems that I have is that I have been in this game a little too long.

If we go back to the 1970s when we were developing a policy in preparation for the UN Conference on Science and Technology, I was part of a team with some eight persons from Trinidad and Tobago who went to that conference. In those days, our position on intellectual property was somewhat different from the position we are now taking. Indeed, there was still the cold war on and, therefore, developing countries had more clout than they have now, because all the big powers were up against each other.

We took the position that intellectual property legislation should, in fact, in the developing countries, be as simple, loose and flexible as possible, whereas the developed countries wanted to have very rigid legislation because they were producing intellectual property which had to be protected. The developing countries—especially small countries like ours which had very little intellectual property being produced to protect—should not give that measure of protection in our countries. That was the position of many developing countries. There was a whole series of property meetings since the 1979 Conference on Science and Technology, many of which I attended. That was the whole thrust in those days.

What has happened now, of course, is that developing countries have lost their clout. In spite of all that we may say as to the benefits to ourselves of these very rigid measures, the fact is that we are being forced into them because we are now in this global village and, therefore, have no choice because we would not get investment; we would not be able to trade and all the rest of it, unless we have these measures in place.

So that my approach to introducing such legislation is to say “All right, we have to do it because that is the name of the game, but let us see how we can extract enough benefits to ourselves in so doing.” So we must look at all the measures that are allowed which are very similar to the TRIPS Agreement, in order to seek the maximum benefits to our own position. In order to do that, we must have the science and technology policy in place.

Now, we have been discussing this for the last six years or whatever. The last government had a draft, a Green Paper and it seems—although it has not been explicitly stated—that this Green Paper has been adopted by the present Government and it is still being discussed. I have to assume that it is still the Green Paper of the present Government. Seriously, unless we put that in place, we really are at a disadvantage in deciding what measures we want to adopt in this legislation.

12.00 noon

So, if we turn to the Agreement on TRIPS again, I want to start by looking at Article 7 which gives the “Objectives”. I am going to read it out because, again, it states the advantages to the countries.

“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation ...”

So that one of the policies that I assume we must have is that we are looking to see how this can help with technological innovation in our country.

“... and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare,”

So that one of the items that we can put at the top in considering our legislation is contribution to social and economic welfare.

With respect to Article 8, it refers to “Principles” and says:

“Members may—”

—and this is very important.

Members may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development,”

Then it says.

“... provided that such measures are consistent with the provisions of this Agreement.”

So our strategy again, has to be to look for how we can protect ourselves as much as possible because, let us face it, some of these inventions, innovations and products which will be developed and which will be protected under our laws may not necessarily be to our great advantage.

One of the areas in which we can protect ourselves and make exemptions, is the area of public morality. I want to give two examples to indicate two extremes of positions which countries might take with respect to that exemption. I do not think that there is an exemption with respect to public morality in the Bill. I may be incorrect in that because I have had a short time to look at it in detail in relation to the Agreement on TRIPS. I have had the Bill a long time before but I did not have TRIPS Agreement until quite recently.

Let us assume there were products, as is happening, to promote abortions. Now abortions are illegal in this country, so it seems to me quite legitimately, we could exclude such products on the grounds of public morality or conflicting with our existing laws and there could not be, in my opinion, any adverse effect, either through TRIPS or the American Intellectual Property Bureau. If we do not have in our legislation the possibility of prohibiting things on the grounds of public morality, then we will be in a much weaker position to do that. As I say, this is one of the advantages of going through a select committee because we can go into detail in the Bill itself and determine whether that is so. I would ask the hon. Minister to look at that for me and perhaps try to get some amendment when the time comes.

Another example which is perhaps more marginal than the other situation is that the world is becoming more conscious of the dangers of smoking and so in many instances, countries are trying to discourage smoking, not by legislation, but by moral suasion. In a few years time we might, indeed in the world, get to the position where many countries would actually legislate against smoking, quite possibly, as the evidence accumulates as to the adverse effects. Would we then be able to prohibit the importation or registering locally of patents to do with the production of cigarettes and all that?

These are two examples that indicate—in one case I think we would have a very strong position and in the other case, in the future we may have a stronger

position. Again, our legislation must allow us to be able to meet these various eventualities.

Of course, one aspect of the legislation that occurs in the TRIPS Agreement, if I may just skip to a further point in the document, I think it is Article 73, which deals with national security exemptions. It states:

“Nothing in this agreement shall be construed:

- (a) to require any member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or”

It goes on to a number of areas in which one can opt out of the agreement in effect, if it affects one’s national security. Again, it is something that I tried to check last night. I am sorry but I could not find exemptions in our Bill to deal with national security. That is another area, it seems to me, that we should include, so that should the need arise we can do it without trouble by our obligations under TRIPS or under the American Intellectual Property Agreement.

Now, in Article 27 of the TRIPS Agreement we come to exclusions that we can make. I will just be referring to one of these and that is, morality. In fact, in Article 27 it refers to both public order or morality, and I think it is important to have that kind of provision, but more important to my point of view, this is because of my own particular area of activity, there is a possibility of excluding and I read the provision. It is 3(b) under Article 27 of the TRIPS Agreement:

“plants and animals other than microorganisms and essentially biological processes for the protection of plants and animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this sub-paragraph shall be reviewed four years after the entry into force of the Agreement establishing the MTO.”

Now, it is my understanding, because the committee to which the hon. Minister referred, had once asked me to attend some of its meetings to discuss plant protection and I understand that legislation will also be forthcoming in the near future, I hope, on the protection of plants. Therefore, I would save a long discussion of plant patents for that time, but I think there are some issues that I should mention even at this stage.

The problem when we do not exclude plants from this legislation, even though there will be legislation to deal with plants later, is that there will then be the possibility as happened in the United States, of being able to protect one's plants by both mechanisms. I think this is unnecessarily complicated. I want to give an example of what is happening in the United States, but which is being resisted by Europe and other parts of the world, to deal with patenting and plants.

It is now possible under the patent legislation, not under the plant protection legislation, in the United States, to patent genes. Now, a gene is an entity in living organisms that controls either a process in a plant or an end product. New biotechnological developments allow by technology to remove a gene from one organism and place it in another. In fact, this can go quite far, where one can take a gene, since all life is based on similar entities of genes, and it is possible to transfer from any animal to any other animal, or from a plant to an animal and so on and create all sorts of monstrosities in that way, or do good by having improvements by correcting genetic diseases in humans and so forth. With respect to plants the ability to patent genes has gone so far in the United States that if the gene is transferred to another plant, which may be desirable in that plant, because the gene has been patented, all the progeny of that plant also comes under the patent.

Now if there are plant protection laws as opposed to patent laws, and we did such a process, all that would be protected is the plant created, not the progeny in which the gene occurs. This is an extremely controversial issue at the moment because the Europeans are saying that one should not be able to patent genes; one should be able to protect the plants in which the genes are placed but not the genes themselves, because this ties up all the progeny for whatever generation. One cannot then use that plant by plant medium to create new entities because the new entities may contain that gene as well which is under patent. This is one issue to think about when it comes to whether we should exclude plants from our patent laws.

Mrs. Persad-Bissessar: Mr. Vice-President, Sen. Prof Spence is saying in Europe this is what the move is, the plant can be patented but not the genes and in the USA both can be done, the plant and the genes. What is his solution for Trinidad and Tobago?

12.10 p.m.

Sen. Prof. J Spence: I was arguing that it will be beneficial to exclude plants patented under this legislation and then deal with whatever eventualities might

occur in the plant legislation. At the moment, since we have not excluded the plant legislation here we can do it under both and the patented legislation may allow us to do this device with genes which the plant legislation might not allow us to do.

Mr. Vice-President, it is a great pity that the plant legislation has come after and not before, because in a sense there is more urgency with the plant legislation. One of the issues to do with the plant legislation, especially the agreement with the United States in intellectual property, is that we should join the UPOV Convention which deals with plant patenting.

Now originally we had the option of joining either the convention that was made in 1978 or the one that was made in 1991. In the committee which I attended, I argued strongly that we should opt for the 1978 convention, because, in fact, there is more flexibility. What is happening all along—let us face it—developed countries have found it more beneficial to have stricter laws with respect to patenting the products they produce, whereas it is not to the advantage of developing countries, in many instances, to do that as yet.

You know, when we talk about the benefits in the patent system, the big issue with the United States in China now is that China is saying that, in effect, all this patenting is not good for them. So they are allowing a certain amount of pirating. Everybody knows it. The United States nearly started a trade war with China on that account. This means that for China, which many people think is going to be the leading world power in the next 25 years, notwithstanding the United States, in that stage of development, China is finding it beneficial not to have strict patent laws within its country. I think this clearly proves—I am not saying that we can do it because we are a small country and obviously we have to conform, but do not argue that conforming is necessarily to one's benefit. It may not be. China certainly does not think it is. I think it may be still possible for us to join the 1978 UPOV Convention, but the time when it is still possible for us to do it is rapidly receding; it would become more difficult. So we should set about doing that as quickly as we can.

Another point about the patenting of our plants and animals—and this applies to animals now—is the issue that is arising in the world—and I think Senators may be amazed to hear what is happening in this regard—with respect to the patenting of human cells. Again, I regret to say, the United States is the chief offender in this regard. What has happened is that officials, including the National Institute of Health, have gone to indigenous peoples in developing countries and found that because they are a separate population that have not been mixing with the rest of

the world community, they have certain attributes in their genes that may be beneficial in regard to correcting deficiency diseases in the future. Cells are being collected from some of these primitive people without their permission, without their knowledge; they are being cloned in the United States; they are being used as tissue culture; cell culture, and the National Institute of Health has patents on individual human being cells. This is a very amazing development that is occurring in the world, because their legislation does not prohibit the patenting of human cells.

So it seems to me that certainly even though we could do nothing about the United States, we at least can show a moral position in our own regard and not allow that to be possible here. So I think we ought to look at the exclusion clauses.

Now Article 31 of the fifth convention allows a certain amount of use. Again, I apologize if some of the things I am raising here, in fact, are covered in the legislation. It is just necessary for the Minister to say so in winding up.

With respect to use without authorization, that is in cases of emergency—I suspect that this is covered, but it is an important point because it allows a certain breaking of patent if there is a state of emergency or some particular circumstance where one may, in fact, allow the use. For example, suppose there is, let us say, an outbreak of mosquitoes and one can produce a substance locally quite quickly and cheaply but it is very expensive under the protected product that is brought from abroad, it may be possible to use it without authorization and compensate the holder of the patent subsequently.

Another change that has occurred—and this is in Article 33, the term of protection—which I do not think is to the benefit of developing countries, is an increase in the period of protection from 17 to 20 years. Again, this protects the interests of the manufacturing countries that produce all these patented products, but lengthen the time in which one can exploit the patent for the benefit of the population in general. I have an example just in my own case. I take two asthma remedies. In both cases the patents have now run out and the prices have dropped dramatically, to my benefit. So that it is to the benefit of the population as a whole, in some instances, if there is a shorter period of patent. Again, there is nothing one can do about that because that is the way the developed world has forced us to go.

With respect to enforcement, section 41 in the TRIPS Agreement, again, we should be careful that when we set up the system, we do not do anything with our

laws that we might not otherwise want to do. Here I just gave the example, in that I think now, parties are forced to name third parties who may also have been responsible for the infringement of the patent legislation. I am not quite sure how that tallies with our existing law, whether it is possible to force somebody to implicate a third party in some legal matter. It states under Article 47 in the TRIPS Agreement "Rights of Information". I do not know whether we have done that in our case.

Article 50 in the TRIPS Agreement agrees with the transitional period, and we referred to this earlier with respect to the fact that we have now reduced to two years, virtually, by signing this agreement with the United States, which I think we could have very well tried to delay. Indeed, since we are assigning blame and the present Government has boasted of its renegotiation of various agreements, perhaps this is one that we should have attempted to renegotiate to allow a rather longer period before it came into effect.

Indeed, for least developing countries the period is 10 years, not five years, before they need to comply. In the case even of developed countries, although five years is the normal period, it is possible in certain areas to have another five, and I think some of the areas in these other Bills, like the Layout-Designs and the other measures that we are putting into effect, we could have asked for another five-year extension, of course if it were not for the US Agreement.

In Fairing: This is something that we will discuss when we come to our plant patenting, but it is something which I think needs to be mentioned here, especially since the Plant Protection Bill is still being developed, and that is the position of indigenous materials. Now again, this is another North/South issue of some importance and, of course, where the developed countries are taking a different position from developing countries. Indeed, for a very long time the United States declined to sign the Bio-diversity Convention which came out of the UN Conference which took place a few years ago in Brazil, and they declined to sign it because that conference gave certain protection to developing countries which hold certain biological materials, plants and animals, within their confines.

12.20 p.m.

What is happening again is that indigenous peoples who have developed over time, medicinal processes for curing various diseases, are finding that the developed world is growing, taking their invention—because inventions they are, even if they may have occurred over successive generations—and exploiting them

commercially and selling the products back to these same people in slightly different forms.

The Bio-diversity Convention was intended to protect the materials that occur in developing countries like ourselves with respect to their exploitation and to ensure that some reward is given to the countries and the peoples from which materials are taken.

When we are looking at our Plant Patenting Bill we should also look at the Bio-diversity Convention, notwithstanding the United States' position in that regard. I think President Clinton has since signed the agreement.

One particular measure that is in the Bill which I do not think was mandated by the TRIPS Agreement and which I think is a very good development, is the utilities certificates. In many instances our inventors and scientists may not be as sophisticated as to be producing entirely new inventions but may nevertheless have good ideas which should be protected in some way from exploitation.

The only issue that I have with that is the time-frame within which the protection occurs. I appreciate that part of the protection given to patents is in order for the developer of the process to recover his cost which may be very considerable in many instances. Therefore, the extension of the period from seven to 20 years, I suppose, is because costs are even greater these days than they were in the past. I think that we should, nevertheless, give as much encouragement to our local persons who are making small advances with respect to these inventions. I have moved, therefore, an amendment in which I suggest that the period be extended from seven to 20 years.

The hon. Minister passed me a note which indicates that 20 years may be a rather long period because, generally, university certificates are not given for those long periods. Nevertheless, I think we ought to look at it—and we might compromise and turn ourselves a fortune and what have you. Here, again, our philosophy should be to give as much help as possible to our local situation.

If we start from a policy position, we can then look at the various measures, not in terms of whether this is the one that happens to be university-accepted for developed countries, but whether it suits our particular circumstance. Therefore, how can we modify it within the terms of our obligations under the various international treaties? How can we so manoeuvre our position to protect ourselves and get as much benefit as possible even though we accept that we live in a global

village and there are certain obligations needed to attract investment, that we want to have international trade and so forth? That is the position from which I started and that is the position at which I end.

Thank you very much.

Mr. Vice-President: Hon. Senators, it is 12.25 p.m. and I propose that the Senate now break to accommodate our lunch. The sitting will resume at 1.30 p.m.

12.25 p.m.: *Sitting suspended.*

1.30 p.m.: *Sitting resumed.*

Sen. Danny Montano: Mr. Vice-President, this bundle of legislation before us concerns the protection of intellectual property and has been very well articulated by the speakers before me. It is a very necessary piece of legislation, and you have heard from the hon. Minister the length of time that it has taken to form and reform it in its present level.

Sir, the value of intellectual property is well known and respected and it has been known for a long time. As far back as 1790, patents were being registered in the United States. We have now come to a point where with the globalization of the market place, it is now necessary that patents be protected outside of the domain in which they were originally created. From our point of view, in this micro state of ours, it has significant relevance and importance. As far as 10 years ago, Mr. Jean Jacques Shervan Shrieber in his book *The World Challenge* discussed the importance of technology to the development of states and countries. His argument in that book was that, contrary to the fears and beliefs as they were held in the 1960s and 1970s when the pervasive view was that industry should be labour intensive, that view was considerably *passé* and that technology would be the driving force of economies in the future. He, of course, is completely right, and has been proved to be completely right.

One has only to look at the Far East to see what they did. They, for the longest while, piggy-backed on the technology of the developed world—primarily in the West, and then after a while they began to develop their own technology. To that end, we can see the startling growth of the economies of south-east Asia including Japan. It is this vision that the former administration had in developing the package of legislation that we now have before us.

We are, as I said earlier, a micro state, and notwithstanding the fact that we really cannot resist the international moves of the developed and stronger nations,

we can, with care and consideration, benefit tremendously from the technology that they can bring to our shores.

There has always been dispute and differences of opinion between the advanced industrial countries and lesser developed countries such as ourselves which tend to use and exploit intellectual property without paying for it. However, Mr. Vice-President, the latest dispute between China and the United States of America signals the impact that non-compliance with the international dictates will have on international trade, and we as a micro state cannot put ourselves in the position where we are literally spitting in the wind.

What has been happening is that the developed world has been shifting with the globalization of the market. The developed countries have been shifting their emphasis from one of direct manufacturing into more service orientated businesses and exporting their technology to lesser developed countries where the cost of manufacturing is lower.

It is with this view that Trinidad and Tobago stands to benefit, but they will only bring their technology here, if they know that they are sheltered and protected. In doing so, the state has a very important obligation to encourage an institutional climate for indigenous innovations. The hon. Minister referred to that in her contribution and she is absolutely right. The mere fact that the technology is brought here will help this event come about.

We must understand that from the perspective of the developed countries, investment in research and development has been enormously expensive and lost income from piracy is excessively high. In the United States in 1986, it was estimated that US firms lost between US \$43 to \$61 billion in lost income in that year alone from piracy. This occurred mainly in the areas of motor vehicle parts, photographic equipment, computers, software, electronics, pharmaceuticals and chemicals.

1.40 p.m.

The disparities between trading nations in size, stage of development and negotiating power place special demands on public policy, and that public policy must be directed to developing indigenous technology.

A very good example for us to consider is the example of Canada. Canada sits on the border of the United States and its economy is roughly 10 per cent the size of the United States. The presence of substantial US ownership in manufacturing and resource facilities has sometimes been a subject of friction and debate between the two countries. One consequence of the ownership pattern has been the

occasional, yet significant, intrusion of US domestic policies and laws into the Canadian setting. For example, the United States has extra territorial laws relating to export constraints of their multi-national corporations and this has been a major irritant for Canada. What that means is that some of the US subsidiaries operating in Canada are not permitted to export their products into the same region into which their parents are exporting. This is something we must be very careful of here when we invite multi-national corporations.

What has happened also in Canada—and it has been of very major significance—is that Canada for many years was in the position in which we were a few years ago, in that many of its industries tended to be regarded as screwdriver type industries, and the level of technology used and particularly the extent of research and development that was taking place in Canada was significantly lower than was desirable. This is an important issue for us in Trinidad and Tobago to take cognizance of.

In the area of pharmaceuticals, for instance, the Government of Canada was able to put pressure on the pharmaceutical industry to increase the level of research and development from 4.8 per cent of their gross sales to 10 per cent of their gross sales as a matter of policy. That level of expenditure was targeted to rise to an estimated US \$740 million annually. That is the kind of investment and the type of expenditure that we in Trinidad and Tobago need to attract—and I make the comment as it was conspicuously missing from the contribution of the hon Minister.

The level of research and development that we could attract here is important. I recall—and perhaps Senators could refresh their memories with the specifics—that in the 1940s, research was being done in Trinidad, I believe it was either in Santa Cruz or the Maracas Valley, by an individual who was experimenting with television. In fact, one of the earliest pioneer transmissions of television actually took place in Trinidad. Without any assistance and without any organization supporting that research and development, of course, nothing came out of it in Trinidad.

We are sitting on a situation where we have a significant resource base—oil and natural gas—which very large industries are using. We have a large petrochemical industry and we would, on this side, like to see that the policy of the day dictates to the multi-nationals, or encourage the multi-nationals to increase the level of development and research in Trinidad and Tobago. So that among other

things, institutions such as the Faculty of Agriculture at the University of the West Indies, could be restored to its former stature in the world.

We cannot sit here as a microscope and simply accept the dictates and laws of other states which benefit them alone. We must be clever and find ways to take the benefits for ourselves. I implore the Government to use their office to discuss with all of the companies that are already in Trinidad and Tobago, and the companies that will be coming here, the issues of research and development. It is the technology that we develop that would drive this economy forward and sustain the movement forward well into the 21st Century

Mr. Vice-President, I would only emphasize the comments of my colleagues who spoke before, that the detailed content of the Bill is to a very large extent beyond the purview of this Chamber and ought to be referred to a select committee. While we understand the need for haste and speed, we would certainly like to express our willingness to attend any of the meetings that would be necessary to accelerate that process.

I thank you.

Sen. Prof. Julian Kenny. Mr. Vice-President, I join with the other Members on this side in commending the Government for bringing this legislation at this time. However, I would also like to commend the process which apparently started many years ago. I do not think that serious legislation can be produced in six months, or even six years.

One of the concerns I have with this legislation is that I have not really had an opportunity to look at it in any great depth, and I am still slightly confused in terms of its interpretation. I understand, of course, the need for this legislation to be passed fairly quickly, but when I see a piece of legislation of this size, I really do feel strongly that certainly, in future, when we have complicated legislation, that we submit it to a select committee, so that the Members of the Committee could interface with the technical people who have been working at it for several years.

One of the concerns, of course, is that there is something like 90 clauses, and remembering that virtually every piece of legislation which passes through here requires the unremunerative work of Sen. Daly in drafting, I wonder whether this is a perfect draft. It is unfair to Sen. Daly to expect him to look at this Bill and say this is perfect. I am sure it is not. Look at my confusion with the meaning of things. When we look at Part IV it says:

“Subject to section 12 a patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say:

- (a) the invention is new;
- (b) it involves an inventive step;
- (c) it is capable of industrial application.”

1.50 p.m.

This sounds as if it means something, so I look now for the meaning of the words “invention” and “inventor”, and I see that an invention means an idea of an inventor which permits in practice, solution to a specific problem. So I become very confused. I now look for the word “technology” which does not appear in the Bill at all. Now, this is not to fault the people drafting it, but it is to remind them that the Bills must be beyond any ambiguity.

The second point I would like to make is that I was rather surprised to see in Part III, the fine of \$15,000 for doing the dirty on somebody who has come up with a brilliant idea. I think that this is piddling—\$15,000 when somebody steals intellectual property which may benefit the inventor millions. I am sure that people would be prepared to pay a \$15,000 and spend six months in jail. Is this not possible?

Now, to come to my third point, I am just a little worried about the subject of intellectual property generally, especially as we live in a society where, certainly, copyright means absolutely nothing. If someone goes to a video club, he can rent a video which says, “for demonstration only” and which gives you an 800 number to call. This is part of our culture. I dare say, Mr. Vice-President, one can go into any office in the country, including Government offices, or a Government research institution, and one would see computers, and ask the question: “That software that you are using, whose is it?” It is so common in this country for people to simply pilfer. It is part of our culture. It is part of our culture to break traffic lights, or fiddle with this or that. So when I look at something like this—it is very noble and so on, but accompanying this, there must be a change in our society toward recognizing the laws of the country, particularly the laws regarding intellectual property. So I suggest that in parallel with this, there has to be a positive move in the country toward getting people to understand the importance of intellectual property and the fact that it is property.

Finally, Mr. Vice-President, I suggest that we should not concern ourselves too much with the year 2000. This is an artificial thing, meaning, perhaps, that we live in a society in which we use a certain calendar and it may have some meaning. When we look at events in the cosmos, 2000 years is absolutely nothing. In fact, I dare say that the year 2000 would be no different from the year 1999 or the year 2001. People in this country will continue to steal intellectual property, they will continue to rent videos, and teachers in our schools will go to the nearest CCS store with a textbook—I have seen them doing it—and they will put it into the Xerox machine, and run off 10 or 20 copies of copyright material for use in the class.

I may emphasise that even at the University of the West Indies when I was there, I had to write departmental circulars to my colleagues—who ought to know better—that they have copyright material. They would pick up a textbook that costs \$700.00, \$800.00, or \$900.00 and would tell the technician, “copy this and distribute it to the class.” So, I believe we really have a serious problem, and the implications of not attending to this side of it—this is not really a law-making problem, but with the sanctions which may come with this behaviour.

I thank you, Mr. Vice-President,

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I am sure the hon Minister will not get into any difficulties with her Cabinet colleagues, nor will she fall from her high ideals in the future. I, therefore, note with satisfaction her words, “The Cabinet will not pre-empt the Parliament”, because it means from now on, things will be thrashed out in Parliament before they proceed to Cabinet. All we will have to do now is to work towards there being free discussion and sometimes a free vote in Parliament.

Mr. Vice-President, these Bills are very important. Intellectual property is just as much in need of protection as other forms of property; or should I put it the other way? I would like to congratulate the hon. Minister on the clarity, grace and economy of her opening presentation, and for the practice to which she has now given her blessing, of giving credit in this place to citizens who perform patriotic work without thought of reward or recognition.

Some of the economy in her presentation very likely comes from the fact that committees not restricted to the governing party have worked on the subject of the legislation, and presumably on some of the drafting. It is expected, of course, that a government that announces itself as a government of national unity, should seek to streamline the work of the Parliament by making use, not only of a joint select

committee, but also of named citizens and citizens' groups. I therefore, thank the hon. Minister for setting a good precedent.

Mr. Vice-President, I said "good precedent" and I mean good precedent. Sometimes when we ask people to do something they say, "there is no precedent for that", as if what has not been done before cannot be done now. Sometimes when we ask people to do something they say, "But that will be setting a precedent" as if a precedent is a bad thing in itself and should not be set. I have a thing with precedent, and I could go on and on, but I do not want to be irrelevant, I am only clarifying what I mean when I say that the hon. Minister has set a good precedent in consulting as she has done now.

I want to agree with Sen. Spence that it might, perhaps, be better in future to establish a select committee, and let the select committee absorb the inputs of the named citizens and citizens' groups, so that when the matter comes before the Parliament and is passed, the responsibility resides with Parliamentarians. That way, Members without technical knowledge and expertise will be able to comment on principles trusting that their colleagues on the select committee have dealt expertly with all the details. Mr. Vice-President, my main drift is to offer a cautionary note. In doing so, I will be underlining something Sen. Spence has said.

In another debate, Mr. Vice-President, I pointed out that legislation and intellectual property rights have a history of being pioneered by the larger countries which had and have their own interests to protect. They do not want us to copy their software; they do not want us to copy their motor car engines and so on. They have all kinds of inventions which they want to protect because we are a market for their products.

This kind of legislation was pioneered by the larger countries which have an interest to protect. Countries like ours are now waking up to the need to protect our own intellectual property. This is specially so with respect to indigenous plants and animals, as I myself noted the last time I spoke on this subject. To take a small example, we have something growing in the forest called rianna which contains—and the phrase is from Prof. Spence—an insecticidal principle.

I read in the papers years ago that this thing was being plucked from the forest and exported in container loads to the United States where it is being used as an insecticide. So people are pillaging the protected forest, taking the stuff, exporting it, and being praised for their enterprise in articles in the newspapers.

2.00 p.m.

This stuff is being used over there now. We should be producing the insecticide and have them buying from us. We have to find a way to make sure, not only that our citizens do not do this but that this thing is protected as part of our property.

Similarly, I was being told over lunch by Prof. Spence again, that there are scientists who have found a way of taking the coconut gene and giving it to the grape oil seed plant and it is now producing a coconut oil which can be used to produce a soap sufficiently like soap produced by the normal coconut oil. The thing is very frightening. We will have to change some of our sayings. Like somebody would look at me and look at my son and say that orange trees do not bear mangoes; but now orange trees could bear mangoes. We have to bear in mind that these possibilities now exist when we frame our intellectual property laws. *[Interruption]* Orange trees cannot bear mangoes. If your son is behaving like a mango and you start to quarrel with him, people who see he is a chip off the old block might say, "Orange tree don't bear mango, boy. Think about when you were young."

Countries like ours which are very rich in these plants, flowers, seeds, animals and so forth, which can produce these kinds of things—other countries have depleted their stock; they have built pavements and libraries and so on, maybe that is the reason why we are not having the library. Other countries have depleted their resources but we are rich in these properties and people are coming here and taking away stuff from our forests, stuff related to our plant and animal life and working on them chemically. We cannot afford to sign up a set of intellectual property laws that have been devised by the larger industrial countries for their own protection and tie our own feet. If we sign agreements with them, when we do wake up and realise that we should protect our thing, we would have already signed an agreement which prevents us from making laws to protect our resources.

Mr. Vice-President, I do not think I have to tell people in this Senate that law is not universal. We cannot assume that the laws that work and are suitable to the larger industrial countries, work and are suitable for us. We have to look at our environment, look at our circumstances, look at our needs and devise intellectual property laws to suit our own interests. If it were possible, I would much prefer to devise our own intellectual property laws and try to get other countries to agree to honour our laws, rather than try to work out a set of laws that apply to everybody

all over the world. I would go for agreements country by country. You are respecting my laws; I am respecting yours. Let us work it that way.

I know it is too late, perhaps, to unravel the process of co-operation. We are tied into international monetary systems and into all kinds of systems because people say we now belong to a global village, but I still feel that within that, some way should be found to give ourselves leeway to devise intellectual property laws and other kinds of laws related to our needs. It is clearly disadvantageous to us to commit ourselves to some of these universal laws. We must not sign away our rights to a certain amount of imitation or as some would have it, piracy, and we must make sure that we are not making it easy for the larger countries which pioneered these legislation to infringe our property rights because they have devised the laws at a time when we can make no input.

I would, as a maker of the law, be very careful, too, about the help I get from citizens. The way the business community works, the way international bodies work, many of our citizens may have commitments to foreign companies and to foreign countries and they would propose international property laws to us which may not be in the interest of our country but may be in the interest of the groups who have employed them.

I understand one of the reasons we cannot get wasps to deal with the mealybugs at home is that there are people in the Ministry of Agriculture who have connections with the people who import drugs and, therefore, they are telling us to spray. On the one hand, we are getting a message that we must spray; and on the other hand, they are telling us not to spray too much because when they release the wasps, they could die. Why is it that this country is not inundated with wasps to eat off the mealybugs? The mealybugs are eating my carambola, they are eating my oranges, they are eating my hibiscus, they are eating my roses, yet I have to work out. Is there some interest at work that is stopping the wasps from being distributed?

That is an irrelevance, but I am just making the general point that the world is very large and very small and that the advice we receive about intellectual property laws may be coloured and conditioned by associations between our citizens and bodies in the outside world. Therefore, we have to be very careful. It should be one of our priorities and premises that our intellectual property laws relate pretty strictly to our needs, and then we can negotiate exemptions if we like.

Mr. Vice-President, this brings me to a particular issue that I have raised previously. I refer to the patenting of the national instrument. Now, I have talked

[SEN. PROF. RAMCHAND]

to people working on the patent laws and so on and I have been told emphatically and repeatedly and sometimes they want to knock me down that they cannot do it, that this invention is so widely spread in the world now, it is too late to patent it. Secondly, to patent a thing, there has to be an inventor. Who invented the pan? Mr. Vice-President, clause 14(1) in this Patents Bill seems to me to offer a solution. It states:

- “14.(1) A patent for an invention may be granted—
- (a) primarily to the inventor or joint inventors;
 - (b) to the successor or successors in title of any person or persons mentioned in paragraph (a);”

We could either get all the pioneers of the steelpan and name them as the inventors or I do not see why we cannot name the people of Trinidad and Tobago as the inventor. I would like the lawyers to say whether this can be done or not, but certainly as a layman, reading what purports to be English, clause 14 seems to permit either of the possibilities which I have mentioned. I accept the objection relating to the time factor, but I still think we can find a way.

2.10 p.m.

Mr. Vice-President, let me tell you a story. Once upon a time a certain king wanted to marry an uncertain young lady. He did not really want to marry her, but to get what he wanted he thought he had to marry. The church would not allow it. He had a choice: Kill the Pope. He had another choice: Come up with the Marriage (Amdt.) Bill. He did not do that. He invented a new church and so we had the Reformation. This man made up a whole new church in order to serve his needs.

Now our position is not as desperate and we do not have to be so drastic, but if we tell ourselves that we have to find a way to patent the steel pan, I am sure that we could put our legal minds to work; we could look at the question of designs, of logo, of trademark. We could look at clause 9(1), (2), (3) and (4) in the Bill and see whether we could not argue that innovations that have taken place in the pan in the last year or two would qualify for us to say that is an invention. Let me just read clause 9:

- "(1) An invention shall be taken to be new if it does not form part of the state of the art.
- (2) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public."

So I think that clause 9(1) and (2) and then clause 10, which reads:

"An invention shall be taken to involve an inventive step if, having regard to the state of the art within the meaning of section 9(2), it is not obvious to a person having ordinary skill in the art."

I am sure that innovations in pan in the last five years would qualify as an inventive step and would therefore allow us to patent the pan. I may be wrong, but all I am pleading is that we get some legal minds together and commit ourselves to finding a way to patenting the pan. If they want to give me an honorary degree in law I will go and help them.

Finally, there is just one question which may be irrelevant but I feel I must raise it, concerning the geographical descriptions about the origin of goods. I could see the need for us to do that when we make our inventions. I could tell you as a consumer, I am frustrated, irritated, annoyed and cheated when I go into the shops to buy something and I ask the man who is selling it, "where does this come from" and I do not know who made it. When we were students—and, by definition we were radical and committed to causes—we never bought goods from South Africa and we used to go to the shop and see a bottle of sherry manufactured in the Commonwealth.

I would like us to be sure that things being sold in our shops and stores clearly state the country of origin of these manufactured products. So although this legislation is really from the point of view of us as people who are sending things out into the world, I think there is a need for it to work the other way, that it must be reciprocal.

So with these few words, and simply to repeat, I think that in our intellectual property legislation we should leave room for ourselves to devise intellectual property laws that speak to our needs and that we should be careful in signing those agreements so that we do not tie our own foot when we want to make our laws.

With that warning, I thank you, Mr. Vice-President.

The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar): Mr. Vice-President, as I rise to make my contribution to these pieces of legislation, I would like to preface my remarks by commenting, first of all, on the quality of the legislation that has been brought before us this afternoon. We have had comments made by no less a distinguished person than Sen. Daly with respect to the rushed legislative agenda in the month of July and his opinion that this would unnecessarily lead to slipshod type of legislation.

While I must admit that I am not the best person to comment on the drafting of the legislation, certainly I want to say that from a technical point of view these pieces of legislation cannot be faulted. I would also like to preface my remarks by commenting upon the applicability and relevance of the pieces of legislation which are before us today.

As enunciated by the Minister of Legal Affairs, this approach to the question of intellectual property rights has its genesis in the Agreement on Trade-Related Aspects of Intellectual Property Rights taken together with the General Agreement on Tariffs and Trade of 1994 and the General Agreement on Trades in Services, and these Agreements form the basis of the legislation which is before us.

The concept of intellectual property rights gives meaning to the fact that the rights of creators of innovative or artistic works have some lien on their work and they must derive the benefits of their work. In the modern context, intellectual property rights include, among other things, a copyright, which involves protecting the rights of authors of books and other artistic creations; patents, protecting the rights of inventors and industrial designs, protecting the rights to ornamental designs. I must say that the legislation before us covers these broad areas.

2.20 p.m.

While it has been recognized in the past that the unauthorized use of intellectual property is an infringement of the rights of the owner, in countries not as discriminating as Trinidad and Tobago, huge profitable industries have been built up based on the manufacture and trade of counterfeit and pirated goods. In some cases due merely to the unsatisfactory enforcement of trademark and copyright laws; in other cases it was the absence of such laws; and yet in other cases these industries were such significant contributors to the GDP that one may be tempted to believe that they may have operated with a tacit if not overt approval of the authorities. In all cases, however, these industries have been based on illegitimacy.

In the past, with communications not as technologically advanced and information throughout the globe not immediately available, it was possible, especially if there was a large domestic market and also a huge regional market without attracting attention extra-regionally. Therefore, there was ample time for these illegitimate industries to become firmly established, notwithstanding their illegal foundation. Therefore, it is within the context of international modern trading practice, that is, the concept of trade liberalization and globalization, that the concept of intellectual property rights has its greatest significance. The concept of intellectual property rights is not a new one. In fact, if I may recall from my history of engineering, the first patent was given in the year 200 BC to the gentleman who invented the water mill. In fact, it was stated that no other person was to build a similar machine within 15 years. Over the centuries, especially in the 15th century the concept of inventions and protecting inventions was developed. As late as April 1996 the Secretary of the United Nations Conference on Trade and Development, in his report to the Ninth Session of the Conference in South Africa stated that:

“during the past decade liberalization has been the hallmark of economic policy throughout the world. Virtually all governments have taken significant steps to widen the role of private enterprise with economic activity. In some countries, for example, the former centrally planned economies this constituted a veritable change of regime, for others, for example, a number of Latin American (and Caribbean countries), it constituted a major shift in the philosophy and approach towards fostering development. In still others, for example, some European economies, it constituted an adjustment of the role of government in a mixed economy.”

The Secretary General went on to say that:

“...the liberalization policies referred to have progressively enlarged the effective economic space available to producers and investors, fostering the process of globalization throughout a large part of the international economy, that is, they have set in train a process whereby producers and investors...”

and this is important”

“...must increasingly behave as if the world economy consisted of a simple market and production area rather than a set of national economies linked by trade flows’.”

In addition to the shrinking of the globe into one market and into one production area, the liberalization process has contributed to and benefited from new technologies worldwide. These have vastly increased the amount, variety and speed of available information in general and business information in particular and drastically reduced its cost. While the increasing impact of information technologies on the modalities of international trade also offers important opportunities for developing countries and their integration into international trade, it also exposes quickly and surely any infractions of the rules and any attempt to pirate or counterfeit material.

To be a part of the trade liberalization process a small country like Trinidad and Tobago must play by the rules or suffer the consequences which may not redound in the same manner for larger and more economically and powerfully political countries. Economic cooperation is itself used as an instrument for integrating developing countries into the world economy. The need for cooperation however, is not only necessary among developing countries but also among developing and developed countries. This paradigm has formed a number of groupings as we are all aware. In our own situation we are aware of Caricom, NAFTA, ACS and so forth. Membership in these groupings and subgroupings have had the effect of exposing Trinidad and Tobago to a significantly enlarged market, in many instances under preferential arrangements. These arrangements have facilitated the rapid expansion of the Trinidad and Tobago manufacturing sector and the petroleum-based sector because the expansion of capacity and the resulting economies of scale would not be feasible if outlets for the resulting increased production are not available. As you know, these have led us into certain difficulties in recent times. We must emphasize the importance of the passage of these pieces of legislation to the industrial thrust of Trinidad and Tobago.

Since 1986 a philosophy has been continued by successive governments, that is, broadening the economy, making our manufacturing sector more competitive and these pieces of legislation are continuing on that path. Members of this Senate will be aware of the significant thrust in investment which has taken place in this country over the last eight months.

I was reminded yesterday that the current investment programme in Trinidad and Tobago is greater than any other country in South America and may be greater than the entire South America as far as industrial development is concerned and that is a significant achievement for a small country like ours. It is within this context that we must put the necessary legislative infrastructure.

Dr. St. Cyr: Thank you for giving way. Is that information you gave comparing Trinidad and Tobago to South America on a per capita basis or absolute, the size of the investment?

Hon. F. Gangar: On an absolute basis. It is within that context that we, as a country and as a people, need to put the necessary legislative infrastructure to support continuous development. As you are all aware, with the thrust in our oil and gas sector many people are setting up industries in this country, for example, the Arcadian Ammonium Plant. The process of producing ammonia is proprietary to M.W.Kellogg, similarly, for the Farmlands ammonia project, similarly for Cleveland Cliffs. The process of producing DRI is proprietary to Lurgi and similarly for Atlantic LNG. The process of producing LNG is proprietary to the Phillips Petroleum Company known as the Phillip Optimize Cascade Process. In these major investments into Trinidad and Tobago, it is necessary that we put systems in place for investors to protect the various patented processes which are so absolutely required in the expenditure of such vast capital sums.

I would just like to say a few words on one particular Bill, the Layout-Designs (Topographies) of Integrated Circuits Bill, 1996. In this honourable Senate, we should all be aware of the importance of integrated circuits to the modern life. In fact, every facet of modern life has some linkage directly or indirectly to integrated circuits.

Integrated circuits are the heart of modern information, communication, entertainment, manufacturing, medical and automotive technology and are now finding their way into items as ordinary as household appliances.

2.30 p.m.

Integrated circuits are miniaturized electronic devices in which a number of active and passive circuits are located on or within a continuous body of material to perform the function of a completed circuit. Integrated circuits or the "I.C" chip, as it is sometimes referred to, have a distinctive physical layout which is first produced in the form of large scale drawings and later reduced and reproduced in a solid medium by high precision electro-chemical processes. Mr. Vice-President, it stands to reason that with such high technology inventions or manufacturing processes, that manufacturers would want to protect their property, so that they can make a fair return on their investment .

On May 26, 1989, the Treaty on Intellectual Property of Integrated Circuits was adopted by the Diplomatic Conference convened for that purpose under the

auspices of the World Intellectual Property Organisation in Washington, D.C. The need for an international system defining rights and duties with respect to integrated circuits arose as a consequence of the development and proliferation of a new technology which is playing a significant role in international trade and competition. Because of the prevailing view that the layout design of integrated circuits is not protected by patents or copyright law, a number of countries have enacted legislation to protect integrated circuits layout designs. The unavailability of similar legislation can, therefore, become an obstacle to international trade, especially in the context of the industrial thrust of this Government where we intend to expand on our manufacturing industries. It is essential that legislation to protect the electronic industry, especially the integrated circuit concept, be put in place.

Mr. Vice-President, it is important for all of us to understand that the adoption of our policies with respect to intellectual property rights is not a matter of choice if one wants to progress, but certainly, I think it is a strategic imperative of modern business practice. If we fails to adopt the necessary legislation in this particular area, we are going to stultify and stymie the industrial development of the country, because one would not want to invest in a country where there is no protection for the various inventions as they are introduced into the country.

Sen. John Spence referred to the question of China. If one considers China as an example, although it has subscribed to the Berne and Universal Copyright Conventions, China does not have a border control system to protect intellectual property, and has given no enforcement powers to the body established to protect software copyrights, for example. This has created significant problems with investors and some of them are withdrawing from China at this point in time. In fact, Bill Gates, Chairman of Microsoft, estimates that his company has lost up to US \$30 million to pirating and unauthorised copying of software. The total annual loss in US business in China alone, with respect to non-enforcement of intellectual property laws, is estimated to be US \$827 million per annum. There is the famous case where a Chinese company was caught illegally using the Walt Disney Company's Mickey Mouse character, and it was fined only \$91.00, so one can imagine the question of scale, the question of magnitude.

Mr. Vice-President, as I close my contribution, I think that all of us in this honourable Senate recognise the need for this type of legislation. It is by necessity very complex technically, and is very complex legally. Again, I join with the Minister of Legal Affairs in complimenting all personnel who have been involved in the preparation of such legislation. I want to assure again—

Sen. Prof. Spence: Mr. Vice-President, would the hon. Minister accept, that within that framework, the necessity for the legislation, the necessity for being global, that we could, insofar as the various international agreements allow, make as much advances for ourselves as we can?

Hon. F. Gangar: Yes, I concur with the suggestions of Sen. Spence, and I think that the drafters of this particular legislation would have taken that into account.

Sen. Spence also drew reference to a science and technology policy, which we, on this side, also agree with, that the question of intellectual property rights must be read in conjunction with an appropriate science and technology, a policy this Government is in the process of reviewing, its approach to its science and technology policy.

When we came into office there was a draft policy in place. It is currently being reviewed. We have asked other interested parties, other stakeholders, for their input into this particular document and it is being addressed with urgency.

Sen. Montano broached the question of research and development, that companies coming into the oil and gas sector in this country should contribute to research and development. At least we are on the same wave-length on this particular issue. It is not often that I agree with Sen. Montano, but on this one we agree.

As you are aware, Mr. Vice-President, with respect to the Atlantic LNG agreement, there is a commitment of US \$9 million for an investment in the National Skills Development Programme, a portion of which will be applied to research and development.

With respect to all the various production sharing contracts which we are in the process of finding, as you know, we have signed three so far this year, and next week Wednesday we are about to sign our fourth. We have a clause which reads as follows:

“A research and development contribution of US \$110,000 for the financing of petroleum-related research and development activity for the first year of the contract and increasing annually at the rate of 6 per cent for the unexpired term of the contract. In the event of a commercial discovery, the amount shall increase to US \$140,000 in the year following that in which the commercial discovery was made and increasing thereafter at a rate of 6 per cent for the remaining term of the contract.”

So again we, are institutionalizing our approach to ensuring that foreign investors, particularly in the oil and gas sector and the energy sector, pay their dues as far as research and development is concerned.

With respect to Sen. Mohammed's contribution, you know I am a little disappointed. I think the contribution was rather querulous and largely irrelevant. She went into all sorts of areas to which I am unable to respond. I do not know if the Minister of Legal Affairs will respond to it, but she dealt with the question of Severn Trent—I do not know how that fits in with the testing of intellectual property rights—the Post Office, Caroni (1975) Limited, the development of the city of Port of Spain and the National Library. I do not know how all of that phases in with the context of intellectual property rights.

So Mr. Vice-President, with those words, I close my contribution.

Thank you very much. (*Desk thumping*)

2.40 p.m.

Sen. Martin Daly: Mr. Vice-President, it is rare but it is always an extremely great pleasure to join in a debate when Sen. Gangar has spoken. I will, in due course, point out to him, how the country will suffer in relation to these four pieces of legislation, as a result of the rush with which they are being passed. He must be patient but I will come to it.

The point is, if we set out commendably with the help of public-spirited, legal and other experts to introduce metropolitan-type intellectual property legislation, we will do a very good job. It is very heartening to know that there are other persons, besides those who serve in the Parliament, who do either unremunerated or remunerated work to make sure that we have good laws. We do not really have much choice about passing metropolitan-type intellectual property legislation, because without it we would not get any foreign investment.

I agree with Sen. Gangar, we probably have done a fairly good job in drafting legislation of the metropolitan type, but I do not think that a Government should pat itself on the back because it has only reached that far. What has happened here, and while in relation to this legislation, well drafted though it may be, what I complain about in this case, in relation to the rush is simply this: If we did not have such a perilous deadline, we may have been able to persuade the Government to have a select committee. As I conceive it, and as others before me have conceived it, the select committee would have been able to engage in dialogue with the same

experts who produced well-drafted metropolitan-type legislation to find out from them, in order to benefit this country, either how this legislation assists us in protecting the intellectual property contained in the steelband or, if this legislation in its present form did not assist us in protecting the intellectual property contained in the steelband, how in their opinion we should do it.

In that way, if we had the time, and if it were not in a rush, the country might have got more positive benefits, gaining for itself protection of something indigenous. That is why on this occasion the legislation is scarred or flawed by rush. Not only on this occasion, because in the case of the Marriage (Amdt.) Bill, something as basic as the law of domicile had been left out. There is no basic flaw as a result of the rush in this case. Indeed, it is apparent from the tributes paid by the Minister of Legal Affairs to the persons who had assisted, the gestation period of this legislation has been very long. I ask the question: what does it do for this country other than secure for us necessary foreign investment and protect the interest of non-nationals of Trinidad and Tobago?. I suggest the answer is nothing. There is nothing in for our inventors, or at any rate, there is nothing to protect the ingenuity of our people of generations past. If we had a select committee, it is obvious from the tenor of the contributions which were made by the Independents, that this is the type of dialogue which we would have had with the experts in order to get something for us. We are doing what we have to, to protect foreign investment, but in order to get something for us.

We have a situation today where we read in the newspapers that the Government is taking credit for a record amount of legislation; the Government is taking the credit for well-drafted legislation; the Government is attempting, in the best sense of the word, to hush up independent critics by saying, "well this time you cannot say anything about the rush, because it is well drafted". What we can say about the rush, is we have not left any time for ourselves and for our interests. That is what is wrong with the rush on this occasion. I would like these experts—whose competence is undeniable—and the interest groups that they may or may not represent and those who are driving this legislation because they would benefit from the spin-offs of the investment, to enter into a dialogue with us about what we can get for the country out of this. That is why the rush is deplorable on this occasion

This is to protect certain interests. It also protects us because we will get foreign investment as a result of passing these laws, but it completely ignores indigenous concerns. So, not only do we have this situation where, in my opinion, superficial political credit is being claimed, but we are going to continue to hear

from every political contender, that the steelband is the greatest invention of the 20th Century

What legislative support is there in this country for the steelband? What legislative steps have we taken to protect “the greatest invention of the 20th Century”? What steps have we taken? What opportunities have we lost on this occasion to dialogue with these experts and interest groups, to tell us? Sure, we will pass intellectual property legislation to protect foreign interests and to gain foreign investments, but while we are at it, since they are so public-spirited and wish to help a poor little Third World country with its problem, namely; how to protect “the greatest invention of the 20th Century”, that is the opportunity we have lost. The cry is for a select committee, not to obstruct or oppose anybody, it is for us to gain something for this country.

Mr. Vice-President, whether it is hush up by insult, whether it is hush up by innuendo, whether it is hush up by withdrawing speech, whether it is hush up by trade boycott—

Mrs. Persad-Bissessar: Mr. Vice-President, I thank the hon. Senator for giving way. I wonder if the hon. Senator is implying there was anyone on this side who attempted to hush him up in any of those fashions he is speaking about.

Sen. M. Daly: Mr. Vice-President, I am always happy for the intervention of the Minister of Legal Affairs, and she has my assurance that I am coming to answer that very question. So perhaps I should start the list again. Whether it is hush up by insult; whether it is hush up by innuendo; whether it is hush up by withdrawing speech; whether it is hush up by trade boycott; whether it is hush up by rumour, persons who are concerned about indigenous issues like the steelpan will continue, perhaps somewhat quixotically, to bounce their heads against the wall. Persons who are concerned about the shallowness of our legislative process will continue to bounce their heads against the wall.

2.50 p.m.

I am glad that the Attorney General asked the question so frontally. I do beg your pardon. It is so hard, really, to come to grips with that particular piece of political reality, but that is something that all sides have in common; we frequently make the mistake and it is very understandable because of her graciousness and directness, and on the occasions of these Bills, her considerable stamina to have defended their four Bills in two different places.

As I was saying, Mr. Vice-President, I am glad that the Attorney General has raised it so frontally. It is almost impossible to get it out of one's system. It is a dose of reality that is long in coming, so let me see if I can get it right this time. You see, when you criticize governments with a capital "G", or you criticize the legislative process generally, you get hushed up by insult or innuendo. What I mean by that, Mr. Vice-President, is that people say you make assumptions about one's background. It is very relevant when we come to discuss the steelpan, because I think at first blush, people who are blinded by political status might assume that Sen. Kuei Tung and I knew nothing about the steelpan and they would make that assumption.

If, of course, they sought to free themselves from ignorance, they might find out that Sen. Kuei Tung and I know a bit about the steelpan because any venture into Woodbrook, when we were youths, nearly always involved getting what you call "Silver Stars licks". Do you know what Silver Stars licks was, Mr. Vice-President? Silver Stars licks was regarded as a "bush war" band, supported by far-sighted school boys like Sen. Kuei Tung who knew that steelpan was a coming thing, and who knew even then, instinctively, it was the greatest invention of the 20th Century and so followed it. The price of following Silver Stars showed that if Sunland was coming down or Starland was coming up, or Casablanca was coming sideways, all of us were steelbands which were run on the basis of might is right.

In those days boys in Woodbrook, in modest circumstances, learnt of the importance of the steelpan, and we have lived to see today that persons all over the world are not only engaging in the performing on the steelpan, but they are gradually, piece by piece, stealing it from us. It would not be long, Mr. Vice-President, before it will be an uphill struggle to persuade anyone in any part of this world that the steelpan has anything to do with Trinidad and Tobago. It would not be long. They would say "What do you mean by Trinidad and Tobago? It came from New York", or "it came from Stockholm, Sweden; or it came from Japan" or whatever.

To this day we have given no legislative support to the steelpan; to this day we simply arrow this cliché, and we have lost a golden opportunity here to let the experts and other interests tell us how we may solve our problem, and if this legislation does not help, then what else we should put in it in order to help.

I missed part of this debate, Mr. Vice-President, for reasons that are perfectly obvious when we shift venue and time. I do not know if that is part of the intention as well that we should not take part, but I understand that persons with other

passionate interests such as Sen. Spence in agriculture, have raised the question of other things that are indigenous and are being stolen from us. I would like to know what this legislation is going to do to help us with those problems.

What I am saying, Mr. Vice-President, is, sure, we have very good metropolitan-type legislation, but it represents a one-way flow for the protection of intellectual property. Therefore, if we cannot have a select committee to engage in this issue—whether it is the rianna bush or the steelpan—if we are to lose this opportunity because of the deadline and the rush to pass this legislation, then I am calling on the Government to show that it is going to depart from the clichés of the past. I would like the Government to set up a high-powered committee whose terms of reference should be to investigate and to make recommendations for the protection of the intellectual property contained in the steelpan. I would like to see this Government set up such a committee with those terms of reference. As Parliamentarians, we have been deprived of the opportunity to investigate that problem because this legislation has to be passed by September 22. For some reason we cannot debate it or look at it in August. It is an opportunity that must and should not be lost. Therefore, I think this Government could, perhaps, be the first Government to show, in concrete terms, that it is serious about what has been described as the national musical instrument.

You see, Mr. Vice-President, talk is very cheap. We have lost the opportunity for leverage here, because we are talking again as though Trinidad and Tobago has nothing to offer. If investors want to come here to help us monetize our natural gas resources—I commended Sen. Gangar for it and I will do so again; he has gone into, what I consider, the proper negotiating mode and is asking for funds, not just for scholarships and funding of shares in the university, but research and development funds in relation to the petrochemical sector as a term and condition of making an investment here.

We can use a similar leverage which we have because of our natural gas resources. We could have used similar leverage here to ask these interest groups, many of whom have already invested in Trinidad without the legislation—we had leverage. “Sure, we want to protect you, but one hand cannot clap; help us to protect ourselves.” We do not have the know-how or expertise, or perhaps we do not have the will. They cannot help us with the will; but we do not have the know-how or the expertise to protect our famous invention, so “could you help us with it at the same time?”

Sen. Gangar, whom I know to be a very direct and honest man, has said it is part of the trade liberalisation process. So, jump high, jump low, this Government, like the last, has to flow in the current of trade liberalization and do certain things. I rely on the integrity of people like Sen. Gangar to see that at least we divert some of that flow, as he has been doing in the case of research and development, into other areas that could benefit the country, so that we can learn how best to protect ourselves, and to maximize the use of our natural resource and our inventions.

I want to give a simple example, Mr. Vice-President, I always like to give practical examples. This is just one example. I certainly did not have any time for consultation or chat with Sen. Kenny or Sen. Ramchand today, but it is amazing how we hone in on similar parts of this legislation. In the case of Sen. Ramchand, he raised the question of the person to whom a patent from invention could be granted. He raised the problem assuming one could patent either the steelpan or some part of it—the steelpan is developing all the time; there are new types of instruments coming out every year. Assuming that one could patent the steelpan or could otherwise protect the intellectual property, to whom would you grant the patent?

Those of us from humble origins would have told those experts that if you went to the Invaders pan yard on Tragarete Road, there has been a Manette. The Manette family, for people who are not from Port of Spain and think a Manette is a fruit or something, Manette is a family name, he is a member of a family, from generation to generation, that has been in occupation of that yard on Tragarete Road opposite the oval. Indeed, some of us, some years ago, were involved in an injunction case to protect the rights of the Invaders to remain there. The whole case turned on the location of the breadfruit tree in the yard, and how long the Manettes had occupied a certain area of the yard in relation to that breadfruit tree which gave them a *prima facie* case of prescriptive rights.

3.00 p.m.

Since it is very difficult at this stage to give a patent for the steelpan because one cannot identify a grantee. We might have been able to ask the experts, in the case of the Mannette family who have been in continuous occupation of that yard since 1946 whether the present Mannette who supervises the cooking of the fish broth in the yard, could be a successor in title for the purposes of this section and if not, give us his expert advice as to how a member of the Mannette family might become the person to whom the patent is granted? We would put them on the horns of a dilemma by asking them to show us how this legislation could achieve it

and if they say it cannot, we would not pass the Bill until they could tell us that we would how it can be done.

Then, of course, there would be protests and as these things go, we would reach elegant compromises. But at least we would have sought to protect indigenous interests and we would not be in shallow ways talking about record amount of legislation, good quality legislation, pat, pat, pat, pat on the back. We would not be doing that. We would have something that we would be proud about. We would have had something that would have specifically looked after the interests of the people of Trinidad and Tobago.

Mr. Vice-President, at the risk of any one of the list of things that I enumerated which caused the Minister of Legal Affairs to rise, I am afraid that while I have no specific drafting recommendations to make to this legislation—how could I, since all the good trademark lawyers in the country have looked at it—I still have an area in which I am saying very respectfully to the Government—and misguided Members of the Government can insult me if they like—this pat on the back, pat on the back, pat on the back approach is not doing anything on this occasion for the interests of the people of Trinidad and Tobago. I am entitled to say that and if anybody is upset about it, actually I am quite upset. I will not be upset if anyone is upset with me about it, because at least I will be the umpteenth person—I cannot claim a patent for it—who has stood here and asked and I put it in colloquial parlance, “When are we going to get real about protecting the intellectual property contained in the steelpan?” That is my point.

We have not had the time to explore this with the experts. I dare say, long before September 22, and I will ask our watchful media to make a note in their diaries that sometime before September 22, 1996, the time by which this law must be passed, some politician who voted for this and some politician who said it was so good, is going to be jumping up and down and talking about the greatest invention of the 20th Century when we have all lost the opportunity to see if we could do something concrete about its protection.

I do not mean to be churlish, Mr. Vice-President, I do not mean to upset anybody, but as far as I know, one of the purposes of the Parliament, unless we have changed the democratic system, is to express one’s concerns and depending on the degree of violence that is being done to one’s concern, to express it more forcibly on some occasions than on others. The point about it is that the role of the Parliament and the role of the press is to give trouble.

I know that Sen. Gray-Burke understands that only too well, because on an occasion—she never had her back placed against the wall by the previous Government as it is now—but certainly on the occasions on which I first got to know this formidable lady, ‘she gih ah lot of trouble, she gih real trouble’. So I know that she will be able, as a woman of maturity and vociferousness like myself, to explain that when we give trouble over these things, especially indigenous things, we are not trying to embarrass anybody, we are not trying to score points, we are trying to advance some particular cause that is neglected in the country.

I repeat, let this Government form a committee to look into the protection of the intellectual property contained in the steelpan. It is long overdue and if we have lost the opportunity on this occasion, then, Mr. Vice-President, we must find some other way of making up for that lost opportunity. If that is done, then we can engage in the type of dialogue that we have lost the opportunity to do on this occasion. That is my contribution on these Bills. They have to be passed to secure foreign investment in the country, but I am not satisfied and I am not going to be hushed up into saying otherwise.

Thank you, Mr. Vice-President.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, just a brief intervention. I rise to support the package of Bills before us concerning the protection of intellectual property rights, but I do so protesting.

This Bill is full of pure technicality—in fact, the one thing I have written above this is ‘pure technicality’ and I have been given just a few days to look at this package. It is so technical, I am lost. This deadline that is put before us, is telling us something since about 1988. Why, since 1988, was the first draft not put to the Parliament and the government of Trinidad and Tobago did not get a chance to go along and work with the committee in doing the kind of study that was necessary, doing the groundwork study, preparing that for us today and of this time? It is a pity that I get the impression that this legislation is a first world initiative. We are driven by a deadline in September 1996 set upon us by somebody else, and that is not too far from now.

3.10 p.m.

I have no choice. That is the only reason I walked with this heavy, very weighty document to come to this sitting today. By the way, we are not so dumb; we were able to understand one or two terms in the Bill. It was not so full of

mystery and puzzle. I want to just mention one of them, and I am very happy that the other Senators were able to pick out certain elements in a Bill that is so technical which was drafted by experts and designed to be interpreted by experts. I pick out one and that is the issue of confidentiality.

We may enquire how in the early stages do we protect and insulate secrets of science, of trade, inventions or any other concerns from predators, especially in our society where a person's business is everybody's business? What machinery is there to protect somebody's idea that leads to an invention—in the Bill that assures the screening, the training of the employees in the intellectual property office? How does one ensure confidentiality when white collar crimes are so rampant these days in Trinidad and Tobago, aided and abetted by our one-eyed friend who sees and knows all our secrets? I mean the computer.

Notwithstanding all of this, this maze that has presented itself through the Bill, I would like to join with all the others in supporting this Bill. I just want to deviate a little. We had many deviations today. I want you to allow me just a minute to deviate. The frequency of parliamentary sessions these days—we have been threatened almost every day in the month of July—and the haste to meet deadlines—that has been one of the themes of this session—gives a sense of urgency that resembles an emergency. I am worried about that. We have to come to this meeting and we have to get there; sometimes you do not get the Order Paper on time and it is not the fault of the parliamentary staff; it is those of us who plan these meetings.

Since this package of intellectual property bills, which protects future inventions and innovations, is being given such prominence and treated with such urgency—and this is where I deviate, with your permission, Mr. Vice-President, and I just want to use a term mentioned by Sen. Daly; he used the term, "in the real interest of the people of Trinidad and Tobago"—I dare to use one that I consider to be a matter that is in the real interest of the people of Trinidad and Tobago and dare to suggest to the Government not to sit on the fence for too long, but to treat with equal urgency, as it treats this kind of legislation, another kind of property matter, not necessarily of the intellectual kind, but the material property which is at the centre of a lover's quarrel between Clico and Republic Bank. A concerned population needs assurances—more than this Bill which is sterile in so many ways and lifeless—of a Government which should intervene and be counsellor and mediator in this lover's quarrel before their ambivalence can lead them to that dangerous cliff at lover's leap and leave us in tears, as in recent years at the funeral

of certain institutions, both in the non-banking and banking sectors. Why not show urgency in handling this lover's quarrel over material rights? By the way, who says intellectual property rights are not material, in a sense, in the issue I am concerned about, along with so many people?

Sen. John: On a point of order, Mr. Vice-President. I think the Senator ought to be careful because counsel for one of the parties might be sitting at this desk. The matter may be *sub judice*.

Sen. Rev. D. Teelucksingh: Thank you very much. I just want to wind up, because I could safely say I do not believe I am offending anyone. We are talking about what concerns the people of this nation and what hurts. This is why I will take a part of the 45 minutes allotted to me to say—whether my good Friend, Sen. Wade Mark waves the blue book at me or not, and I think I know why.

Mr. Vice-President, do you see the fellow in Woodford Square who is getting wet in the rain now and got wet last night? This Bill means nothing to him. This is why I will take part of the 45 minutes allotted to me to tell you something like this. If this is a matter of urgent, national importance that will take us—and we must decide that by September 22, because the United States says so and because the conditionalities of some agreement we must meet, I will find the time to include a matter like this and to tell the Government, do not sit down. In a sense, at the end of the day, if they reach to the cliff at lover's leap, somebody is going to ask: what has the Government been doing?

Coming back to intellectual property, Sen. Daly and some of my colleagues spoke about a simple thing that we have been looking at. A few evenings ago while thinking about this Bill, I asked a friend: "Could you tell me of any invention of the people of Trinidad and Tobago for the last 20 years that we could possibly think about? What invention, what was invented that was unique besides, possibly, the Angostura blend?" People have been talking about the steelpan, but look at the crisis.

Last month a university student from the University of New York came and did a survey of the homeless people in Port of Spain for his PhD thesis. I concur with that very important observation made by so many of my colleagues. He observed 73 per cent of the homeless people in Port of Spain, the vagrants and so on, in the town, were former mas men. He says 53 per cent of them were pan men. You speak about intellectual property rights and property protection. This is the result of our failure over the years to see the need to protect the property treasure

of our people. *[Applause]* The property treasure of their minds and their hands and culture have been exploited to the extent where, of all the homeless people you see, 73 per cent of them were former mas men and pan men.

3.20 p.m.

This is why I speak with so much passion when I ask the Government not to sit on the fence at that lover's quarrel between Clico and Republic Bank. Get in there as a counsellor! This is the problem I see. Sometimes I feel it is more important than this.

I would not like to be an obstacle in the way of the Government—this Government and the last one that signed the agreement on that treaty that this document should be approved at this time. Therefore, if I vote in favour of this, I do so with a strong voice of protest that we need more time. Not too much time, but reasonable; not three days. I know there are two or three pieces of legislation for Tuesday. I do not know where we will get the time to do them. Is the Member coming to tell us that a team had been studying those pieces of legislation for the last two to three years? Monday, is closer; well, we have no time, not even to go to church on Sunday.

Thank you very much, Sir.

Sen. Dr. Eric. St. Cyr: Mr. Vice-President, let me begin by asking two questions straight with respect to two of the pieces of legislation. In clause 8 of the Patents Bill, 1996, I see that certain conditions must be satisfied and three are listed. The question I ask is: Are these to be read as one of these three or must all three be satisfied? In other words, are we dealing with the disjunctive or the conjunctive? The second relates to the Industrial Designs Bill, 1996. I see in clause 5, the right to registration of an industrial design shall belong to the creator. Should that be a capital "C" in creator or a common "c". If it is a common "c" perhaps we might say "inventor."

I am glad that we could start on a humorous note. In so many matters I have often found it helpful to have what a very distinguished captain of our West Indies cricket team used to refer to as two bites of the cherry. That is, if you can take a new ball just before the break at 5.00 p.m. in the evening and get six overs with it then and you start again in the morning, the batsman must face the new ball almost on two different occasions.

On many of these very complex pieces of legislation, I would like the opportunity to debate and have some time to reflect. Essentially, what we do in a debate, is we all come to a situation where we could be comfortable that what we are doing is wise, well judged and in the best interest of the nation. I know we are up against a time deadline. My addition to the other pleas made for a little more time is not intended in any way to be mischievous but really to assist us in coming to that position where we could be sure that we are doing the best we can.

By the way, since Parliament can amend legislation which it passes, I am less worried that the legislation we are passing now may need some amendments in the future, because a sovereign Parliament could amend whatever it passes. What worries me is whether the agreement which we signed which puts us into this time constraint has other binding constraints which, more or less, determine key parameters in the legislation. Since we have not seen that agreement, certainly I am a bit uncomfortable with that.

Often I ask myself the question in relation to what I see, “what is hidden or concealed in what I see?” I want to give a little example. I do not support this story in the least but it illustrates the point I am making. It is said that during the war days when there were American servicemen down at Chaguaramas, the guard on duty would see one of the workers leaving after work pushing a wheel barrow stacked with trash. He would search and allow him to go. This person did this Monday, Tuesday, Wednesday and Thursday and the guard knew there was something happening which he could not put his hand on. On the Friday he said, “this is the last day I am on duty, I suspect you are pilfering something. Could you tell me what it is?” He said, “wheel barrows.”

We have before us some very important pieces of legislation. Let me declare my hand. I will support them all and I urge all to move in that direction. I do not think that as a nation of our size we could play the China today or we could even play the Japan of the post-war period. Japan built their technological expertise by doing what they call unpackaging technology because they were not signatories to many of the conventions governing those processes.

I do not think that a country the size of Trinidad and Tobago could do what China is doing now or what Japan did just after the war. We are rather constrained both by size and location.

I rather suspect that we have put more constraints on ourselves than we need do and I want to take just a few minutes to explain what I mean.

The most crude basis of trade is between those who possess raw materials of one type with those who do not. So that if there is a certain mineral occurring in your country and nowhere else, then you have a basis for trading; similarly with climatic differences. So that we would export bananas and import, perhaps, apples or grapes. In either of those cases no one can steal the basis of that trade. One cannot steal another's deposits of natural gas and I cannot steal your capacity to produce apples in a tropical climate except I went through the very great expense of setting up green houses which would make the cost prohibitive.

The basis of trade today is not that. The basis of trade today is technology, information and so forth. This Bill we are dealing with today really lies at the core of how we, as a small nation, interact in trade with the rest of the world.

3.30 p.m.

Let me make the first comment which is critical. I think we tend in this country to focus on jobs which are very important. As it were, we would design our packages with our eyes focused on jobs. I suggest that we should lift our sights and look instead at how the total product produced is shared. In other words, focus on how the income produced is shared, and behind that income, the wealth that is being accumulated, how that is being distributed.

This is where the debate on the steelband becomes so important—I do not want to say this, but 15 years ago in one of my papers I dealt with a number of services and how one taps into an increasing world less dependent on trade in goods, and more heavily dependent on trade in services. There, the steelband featured centrally, and it seems to me that a whole big industry could be built around that invention if we could recognise the tremendous wealth, income and job creating potential which nobody could steal.

You see, when we go into the production of a commodity which everybody else is producing, some day somebody will find a cheaper way of doing it and that industry will disappear, that source and income and wealth will disappear. So, one really wants, in the long run, to build up a potential which is based on one's own culture, one's own ingenuity which one continuously innovates on and then there would be the basis for tapping into the world's production of income by putting on that stage the products based on knowledge which nobody else can copy, replicate or steal. So, it is very, very critical what I am saying.

Let me say, just by way of summary, that whereas it was impossible in the early days of trade to steal one's tropical climate and then produce bananas in the

European countries, it is now possible to steal the basis on which one differentiates products and so forth. So that, this package of legislation, if we do not get it right, could leave us very much as a poor Third World country, enjoying an occasional boom such as we had in the 1970s and early 1980s, but not solving the long-run problem of putting our resources—especially our intellectual human resources—into the world pool of resources and drawing therefrom our share.

This is why I gave that little story about the wheel barrow, because we have to sit down and work it out—psyche it out, as we would say in local parlance—strategise the thing so that we know what we are after. The other guy may suspect that you are doing something, but he cannot see what you are doing, and the day he discovers, you would have moved on to another level and you could almost tell him what you used to do because you are doing something else that gives you your hand in that international goods pie. Mr. Vice-President those are some of my concerns on the technical parts of the Bill.

I want to make a subsidiary point where foreign firms become the basis, the engine of our economic growth. The protection which these Bills give them—any inventions, any innovations in the processes they use, they will be the ones to whom those rights will belong. So, it is understandable that they will only come if we have this legislation. But as my colleague, Sen. Daly was saying, this package would not give us more benefits than the jobs that we will get from having the tremendous amount of foreign investment, which the hon. Minister told us, exceeded the whole of what is going on in South America—all those countries put together. I hope I heard him correctly.

Mr. Vice-President, I want to make one final point. There are moral dangers lurking behind these measures. While we have to go in this direction, what I heard Prof. Spence alluding to is, that we need to be careful how we go and how far. Certainly, when Sen. Prof. Spence referred to the patenting of human cells, I was worried, because I am sure that that is wrong. I am not going to make an apology to say that I am sure that the patenting of human cells is wrong. I am also worried about the patenting of plant genes rather than the patenting of plants engineered out of genes. The warning I would like to sound here is, that we are a part of an international system and we have to operate in that international system, but we must go in there with our eyes open so that we are not drawn into destruction, along with those who are going in directions which are sure to end in calamity.

3.40 p.m.

These final remarks I had not sought to develop, because they would take us out of the realm of what one might think is an area in which I have some expertise, which is economics, and get into the realm of morality. I put them on the table because I have a responsibility with the rest of us here to safeguard, not only the welfare of this nation in the short run, but the welfare and progress in the long run as well.

I thank you very much, Sir.

Sen. Philip Marshall: Mr. Vice-President. I wish to support this Bill, but I am making one assumption, and that is that computer software be included under these intellectual properties rights. Is that confirmed?

I am sure that the Government does not have to be reminded that with knowledge and intellectual property and computer software being at the very basis of our competitiveness as a nation, that we must be aware of Government policies that can make software more expensive to us. I now understand we have a well managed exchange rate, but no Government ever devalued itself into prosperity. I make this point, because if we are to abide by these property laws in every organization, in every educational institute, in every agency of the Government, what this would mean is that every software licence must be paid for, on an individual basis, those property rights cannot be breached. It therefore means that a Government policy such as, say a devaluation, has caused the cost of software in our terms to be two and a half times that of a domestic user, for example, in the United States.

So I would just urge the hon. Minister of Finance in his budget, to take cognizance of the additional cost of using technology in our schools. Perhaps the Government, very much like the energy sector development school, could possibly afford the people who have the intellectual capabilities to develop our own software, but need the benefit of and access to very expensive operating systems or development tools, some facility which, if they cannot on their own buy this software, and avoid wanting to breach the copyright laws, can have access to some library or other community facility where they can have access to such foundation technology for the way forward.

I want to end with the much debated issue of the library. I remember it was in the budget debate when we talked about the need for a library and what it meant.

Three or four years ago, the library of the University of Gebrovnic burnt down, so did the library in Norwich in the U.K., and with the whole use of technology, the recommendations were, why replace this with a physical building? That a library was no longer a place, a library was in fact an activity. A library was the activity of searching and retrieving information. In Norwich what the Librarian recommended—I am not sure whether his recommendations were followed—was that community centres and the county would be better served in East Angler by having a large number of community centres with on-line access to an information server, and broaden therefore the reach and exposure of knowledge to smaller villages and communities, rather than to spend the money on bricks and mortar. In other words, the virtual library.

The point I am making is that computer software is going to be at the very heart of everything we do in the home and business place and, therefore, to protect the less fortunate who have the mental capabilities, Government should in its 1997 budget have a separate line item for the provision of any development or foundation software for schools, or people in certain categories. We would not want to pass these laws in the Senate today and yet find that we cannot implement them or we breach them, because we simply cannot afford the separate and individual licences that are required. I thank you.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Vice-President, let me thank the hon. Members of the Senate for the quality of the contributions they have made here today, for the suggestions they have made, and for the constructive criticisms that have been leveled at this Government.

Whilst the ideal situation as Senators have indicated, would have been a Joint Select Committee of the Parliament, I appreciate the support that the Senators have indicated they will give to these measures. Despite their reservations and their requests for a joint select committee, they have indicated nonetheless that they will be willing on this occasion, to allow the Bills to go through—if I have understood the Senators correctly—but, in future, all efforts should be made with respect to a joint select committee. I think Senators do seem to understand and appreciate—because they spoke about their feet being tied—that the various agreements that were entered into, prior to this Government taking office in 1995, have bound us to certain obligations which we need to fulfill. I thank Senators for saying they would give the package of legislation the support we need, to have these Bills passed in this Senate.

Mr. Vice-President, I did not, in my opening contribution, attempt to score any points really, it was not my intention to score points nor to pat myself or the Government on the back with respect to the package of legislation. It is unfortunate that sometimes one gives a person an inch and that person would want to take a mile. I still do not want to spend the time of this Senate in terms of going into scoring points, and maligning what happened and what did not happen.

Suffice it to say, whilst it is true that I did give credit to the former administration for taking some steps in relation to this legislation, I did not attempt to score any points when I opened my contribution and I cannot let it remain on the record in the manner in which the Opposition Senator had indicated in her remarks. All that I would say with respect to that, Sir, is that I will not go into what they did or failed to do. It is basically because of their failure to do certain things that it has necessitated this Government having to hold meetings upon coming into office. For the past few months we have been meeting the relevant review committees and so forth. We have held meetings on a weekly basis, sometimes we have had meetings twice per week, late into the hours of the night. As I said, I will not go into the details of what the former administration failed to do, and I leave it at that so that we can move on.

There were some concerns raised with respect to the office of the Controller of the Intellectual Property Office and I am very happy to say that this office, as envisioned in clause 3 (4) of the Patents Bill, would be a public office and therefore the qualifications will be decided by the Director of Public Administration and the Chief Personnel Officer. They would in effect set the qualifications, of course, in consultation with the technical people in terms of what is needed, so that as a public post it will be given due consideration.

3.50 p.m.

It is envisaged that the incumbent will have many years of experience in the administration of intellectual property and is likely to be an attorney-at-law. It should be noted that the Controller is expected to appoint technical staff to carry out the examination and information.

In the past year or even before that, many members of the Intellectual Property Registry have gone abroad for training by the World Intellectual Property Organization, and this will continue. With respect to the concern about the staffing and the expertise of the staffing, I trust that information will help to answer some of the concerns that were raised.

As the Senator mentioned, relocation of the Intellectual Property Office should be to a comfortable building. That is something that we are certainly looking into because the Companies Registry and the Intellectual Property Registry are now housed in one building. I know it is not in the best of condition, as so many government offices seem to be, but it is something that we will be looking into.

Sen. Mark: We inherited those problems and we are trying to address them.

Hon. K. Persad-Bissessar: Well, I am sure that you all know that there were buildings and offices that we inherited.

With respect to the maintenance of the records, the records at the moment are computerized. All trademark records are computerized; all patents records are also computerized, so that the computerization of the office of the Intellectual Property Registry has already begun, for the implementation when it comes to be created as the Intellectual Property Office.

I think I have dealt with the issue of training. Training has been ongoing and will continue. Several worthy comments were made by the hon. Prof. John Spence, and I am very happy to say, Sir, through you, Mr. Vice-President, and to the other Senators who have raised concerns about morality, that the exception of patenting inventions that offend public morality and public order and so on, are very clearly exclusions in clause 12 of the Patents Bill. I will read it, because it was a concern raised by more than one Senator.

Clause 12 (2) reads as follows:

“A patent shall not be granted for an invention the commercial exploitation of which would be contrary to public order or morality, or which is prejudicial to human, animal or plant life or health, or to the environment, provided that such refusal is not based solely on the ground that the commercial exploitation is prohibited by a law in force in Trinidad and Tobago.”

So that public order and public morality are issues that are addressed within clause 12 of the Bill.

On the issue of national security, under clause 48, national security is considered a matter of public interest. So that too would be covered. “Use of patented invention for services of the State”, clause 48 will cover the concerns with respect to national security and the public interest is the issue of national security as well.

With respect to the concern that was raised about the UPOV Convention—whether we shall accede to the '78 Convention or the later one, Sen. Spence raised the concern as to whether the time would have elapsed for us to accede to the '78 Convention. The '78 Convention has provisions that allow us less strict measures and, therefore, would be more beneficial to us here in Trinidad and Tobago. May I point out that we have until the end of 1996 to accede to UPOV's '78 Convention, so that we have not lost that chance. We are looking at the advantages and disadvantages of whether the '78 or the later UPOV Convention should be acceded to. As I said, we do have enough time to go into that. I trust that these would answer some of the concerns raised by Prof. Spence.

There is an issue with respect to the amendment before us, and perhaps we can deal with it in the committee stage. The other concerns that have been raised—and those have to do with what Prof. Kenny talked about, that we should not place special emphasis on the year 2000, there is no special significance in the year 2000. Regrettably it seems as though worldwide the year 2000 is seen as of special significance, and in my respectful view, it is of special significance, because when we enter the year 2000 we are talking about the year 2000 and beyond, that is to say the future, so it must have special significance as we enter a new century. I beg to disagree with the hon. Professor when he says that there is no special significance with the year 2000.

Sen. Prof. Ramchand said that we cannot assume the laws for the international community as being suitable for us in Trinidad and Tobago; we must devise laws that are more suitable to us. I think this concern was also raised by Sen. Daly when he talked about metropolitan laws and so on. I would like to use this opportunity to point out that when the legislation was being drafted, it was very clear that we took every step that we could to bring the legislation in such a way that we could derive whatever benefit we can nationally, that is to say we were bound by certain international agreements, as I indicated, so that we had to comply with those. There were certain things that we were allowed to exclude from the local legislation. Wherever we could have done that, we tried our best to so do.

So I want to make it very clear that whilst we had the assistance of international experts in the drafting of these laws, our local interests have not been sacrificed on the altar of the international community. We have taken whatever steps we could to ensure that they are in keeping with local laws. We did this, and this is perhaps why it also took so long, because each time a model was sent from the international experts, it had to be studied by our local experts including the

CPC's Department and the Law Commission. So if that may help to allay your fears, to some extent, we have tried to do that wherever possible in terms of localizing the laws relating to intellectual property. So we did have an input. I think this is a concern that was raised, whether Trinidad and Tobago had an input, and we did have that input.

Sen. Daly talked about hushing up. I had asked him the question whether there was anyone on these Benches who had attempted to hush him up. If the impression was so conveyed, I regret it and I apologize for it. But there is no intention on this side to, in any way, hush up the goodly Senator. I do not think any of us would succeed if we tried. I am sure the hon. Senator is very capable of having his views heard here and elsewhere. So there is no intention of trying to hush up the hon. Sen. Daly by innuendo or otherwise.

Sen. Prof. Ramchand: Before the Minister goes on, I just want to know whether she is going to respond to the suggestions made both by myself and Sen. Daly about the steelband and the pans, and whether there may even be news about some kind of high-powered consultancy taking place about ways in which we can do something akin to patenting the pan?

Hon. K. Persad-Bissessar: I will respond on that issue. That issue, as I said, was raised in the House of Representatives; it has been raised in public, so I will deal with it in a short while, Sir, if you would permit me to deal with the concerns of the hon. Sen. Martin Daly.

The hon. Senator talked about whether we were protecting non-nationals and whether there was anything in this Bill to protect the work of the people of Trinidad and Tobago and the inventiveness of the people of Trinidad and Tobago. I will respond by asking the hon. Senator, what is there in the Bills that we have brought that discriminates against nationals? What is there that discriminates and says that it does not apply to nationals? In other words, my answer, with the greatest of respect, is that it protects nationals and non-nationals. It protects the inventiveness of our nationals; it protects our creations, scientific, technological and otherwise. The legislation seeks to give protection to the people of Trinidad and Tobago. It does not seek to give protection to non-nationals as might have been insinuated by the hon. Senator.

The help that we would get—and the question was raised whether we were doing this only for investment—

4.00 p.m.

Sen. Prof. Spence: I am sorry to take the Minister back Mr. Vice-President, but I do not really believe that section 48 deals with the issues I raised with respect to security exemptions. The national security exemptions are very specific in the Trips Agreement and they deal with not giving out information which might be contrary to national interest, they deal with traffic in arms and there is another issue which is very specific to national security.

Hon. K. Persad-Bissessar: Yes, Prof. Spence, we will check it out in a moment to see whether we were doing this only for foreign investment and how it does help the people of Trinidad and Tobago.

Sen. Teelucksingh talked about the man in Woodford Square who was getting wet last night and is still getting wet today. How does it help him? In other words, how does it help the man out there in the street? My answer to that is very similar to the one given when we were debating the Marriage (Amdt.) Bill and people were talking about, "We have to help the families. How is this going to help families?" The answer is always, if there is investment, there is a trickle down effect. There is a spin-off effect, therefore, the spin-offs that would come.

So to say it is only for investment as though investment then is not sufficient. From investment comes money; from money comes a better standard of living and a lifestyle for all the people of Trinidad and Tobago. So that the man who was mentioned getting wet out in Woodford Square, maybe he will not benefit today, but certainly from investment that will come in. It is a question of investment in the economy and, therefore, income for the country.

On the issue of the Bills being lifeless, sterile and so forth and the diversion into Clico/Republic—I think the hon. Senator mentioned Clico/Republic and that these matters are before the court—but I may make mention that the Hon. Sen. Brian Kuei Tung, in his capacity as Minister of Finance, if the Senator were reading the newspapers recently, did offer his services as a mediator in the dispute and the suggestion that Government should, in some way, leap into the lovers' quarrel and mediate or counsel. I think Sen. Kuei Tung has indicated his willingness; he has leapt into the lovers' quarrel and said, "I am willing to mediate."

On clause 8 of the Patents Bill, Sen. St. Cyr asked whether the three conditions were disjunctive or conjunctive and it is envisaged that all three need to be considered, that is, that they are conjunctive—inventiveness, industrial application

and I do not remember the other one now, but the three conditions for patentability are conjunctive. He also mentioned clause 5 of the Industrial Designs Bill and asked whether creator should be capital “C” or common “c” and therefore if it is a common “c” whether the word “inventor” should not be used instead of “creator”. First of all, it is common “c” and we cannot use “inventor” instead of “creator” there, because what is envisaged there is not an invention but a creation and there is a distinction between “inventor” and “creator”. I trust that that would help explain why we have not used “inventor” instead of “creator”.

Sen. Marshall raised concerns with respect to computer software and I did indicate to him that that will gain protection as well.

Finally, the question that has been raised here, elsewhere and outside has to do with the whole issue of the steelpan in this country. Again, let us not score points about who did not do what they should have done over the past how many years. The issue is a legal as well as public one in the sense that this is something that is so vital and important to us and so crucial to this country. In the law, it may well be—and I am making no judicial pronouncement—that it has gone too far, it has gone into the public domain, therefore, we cannot patent the pan from its originator. We cannot do it. The point that I made before and I am making again is there is nothing that precludes the bringing of an application and let it be decided in that manner.

Secondly, it must be pointed out that any improvement to the pan can be patented and, in fact, I think I did mention there is a Trinidadian who lives in Canada who is attempting to patent some improvement that he has made. So any improvement certainly can gain protection under the legislation, but I would like to say—and there was a suggestion made by Sen. Daly about setting up a high powered committee and so forth—that in our discussions with certain Members of the Government that we are willing to give the undertaking today, that we will try to find whatever way we can to look at it. My Ministry will look at the legislation, at what has gone and try to see if there is any way that it is possible to grant a patent to pan and to hold that patent in trust as it were, for the people of Trinidad and Tobago. Whether we do it through Pan Trinbago as the applicant and holder, whether we do it as the people of Trinidad and Tobago, I am saying that there are legal constraints. All I can give is the undertaking that we will attempt to do it. We will look at the avenues to see what can be done. I cannot guarantee what will happen. In terms of what our findings are, we can certainly report back to Members and see where we go from there. My undertaking today is very clear,

that we will use whatever effort and expertise we have at our disposal to see if there is any way possible to have a patent granted for pan in this country.

Sen. Prof. Ramchand: The public should be invited to submit memoranda on this question, in the press, on the radio, on the television—invite the public to submit memoranda to you or to some committee about ways in which this can be done. Secondly, can the Minister respond to the question as to whether the agreements we are signing now will bind us in perpetuity or for a certain number of years and thus prevent us from developing our own patent laws? Can the Minister also respond to a suggestion, that an alternative way of proceeding might be to develop our own laws without regard to what they are proposing to us as models and then seek to negotiate?

Hon. K. Persad-Bissessar: On that last point, we did have some laws as is known. We had the Patents and Designs Act, we had our Copyright Act, so we have our own. They have become as we said, to some extent, outdated, no longer as useful as they might have been. So we do have ideas. It is not just that this is being supplanted, or being imposed from above or from elsewhere. We do have our own and it is the coming together of these two at all times, I think that is what we will attempt to do. I do not know if that answers the question.

The other issue spoken about inviting memoranda from the public, I am saying that the undertaking I am giving and I will repeat it, is that we will do everything that we can, whatever it may be to see if there is some way in which we can grant a patent for the pan. Whatever that entails, whether it be inviting memoranda, whether it be public consideration, I am saying that that undertaking is given today in this Senate.

Sen. Prof. Ramchand: And the last point about whether those agreements that we sign now will bind us, or prevent us from modifying the patent laws.

4.10 p.m.

Hon. K. Persad-Bissessar: I have been advised that the bilateral agreement with the United States is for 10 years and with respect to the TRIPS Agreement, there is no specified period in terms of how long we are bound. In terms of harmonization of the laws internationally, my understanding is that there will be harmonization of laws internationally and therefore, whatever it is we were bound by, in these original agreements, we are complying with that. That is what this legislation is about. So that once we have done that, in a sense, all we need to do is

to harmonize as we approach the year 2000 and beyond, and there will be adaptations that we will make in keeping with future trends.

Finally, the concern has been raised with respect to how the public benefits. I would like to say that the Ministry of Public Administration and Information, in conjunction with the Ministry of Legal Affairs, will be launching a public education programme. In fact, the hon. Nafeesa Mohammed spoke about the enthusiasm of the Minister of Legal Affairs. Let me assure her that it is not only with this, but the Minister of Legal Affairs, in any job, is always very enthusiastic.

So that the public education programme, in my respectful view, has already started in terms of making the public aware of the intellectual property legislation package. We intend to continue this exercise in conjunction with the Ministry of Public Administration and Information and we are hoping to host a symposium. We would be assisted by the World Intellectual Property Organization as well. We have a whole programme and package planned—once the laws are enacted—which we hope to put into effect, in terms of educating the public with respect to the legislation.

Sen. Mohammed: Can the Minister give us an idea when this office would be established?

Hon. K. Persad-Bissessar: Are we speaking of the office, the physical building, or the office, of the person of the Intellectual Property Office?

Sen. Mohammed: I am just interested in getting an idea of the time frame that is involved with respect to the establishment of this office.

Hon. K. Persad-Bissessar: As I indicated before, we had started putting certain things into place in terms of the creation of posts. *[Interruption]* Sen. Kuei Tung is suggesting that some people may be looking for the job of Controller, but I do not think we could take that seriously.

So the physical office, I think in my opening contribution, I did mention that we are looking at other areas where we can physically locate the office. There is an intellectual property registry at the moment. So that what is envisaged is that it would be converted into an intellectual property office. Of course, the office would be on a larger scale, not just in terms of space, but in terms of equipment and staff.

I do not want to stand in this Senate—and I think this is what the hon. Senator is trying to get me to do—to say December 21. I do not intend to do that. What I would say is that we are taking steps to try to put this in place at the earliest

possible opportunity after the legislation is enacted. I trust that we may be able to do so within this year, before the year ends, but I cannot give a specific date, as it were.

There was the point raised by Prof. Spence about national security. I am advised that the agreements state expressly that nothing in the agreements shall be construed as requiring the disclosure of information contrary to national security. My advice is that there was no need to put this into the individual Bills. It is contained in the agreements and will be binding on the parties. This is the information I have.

Sen. Prof. Spence: I thought the idea of legislation is to put into law what was agreed in the agreements. If the Minister is taking that position, then we need not have had a Bill at all.

Hon. K. Persad-Bissessar: I would ask the Senator if he would kindly permit me some time to consider the point which he has raised. Whilst we are at committee stage, I will consider that point and we can deal with it .

So I thank hon. Senators for their contributions. I do not know if there is anything else that I may not have touched in terms of concerns that were raised. Again, I want to thank Senators for the time that they came here today and spent with us and giving us the support that we needed to get this legislation through, for agreeing to take the four Bills as a package, rather than dealing with each one separately. I want to thank them for their kindness and co-operation this afternoon.

I thank you very much.

Question put and agreed to.

Bill accordingly read a second time.

Mr. Vice-President: Hon. Senators, before going into committee, I want to announce that we are going to be continuing the committee stage without a break, so we are going to defer the tea until after we deal with the committee stage. We have arranged for the coffee and the tea to stay hot.

Bill committed to a committee of the whole Senate.

Senate in Committee.

Mr. Chairman: We are dealing first with the Patents Bill which contains 91 clauses in 20 parts, and as indicated, we would be dealing with them according to the parts as opposed to clauses.

Part I, consisting of clauses 1 and 2, ordered to stand part of the Bill.

Part II, consisting of clause 3, ordered to stand part of the Bill.

Part III, consisting of clauses 4 to 7, ordered to stand part of the Bill.

Part IV, consisting of clauses 8 to 12, ordered to stand part of the Bill.

Part V, consisting of clauses 13 to 17, ordered to stand part of the Bill.

4.20 p.m.

Part VI, consisting of clauses 18 to 28, ordered to stand part of the Bill.

Part VII, consisting of clauses 29 to 31, ordered to stand part of the Bill.

Part VIII, consisting of clauses 32 and 33, ordered to stand part of the Bill.

Part IX, consisting of clauses 34 to 39, ordered to stand part of the Bill.

Part X, consisting of clauses 40 to 44, ordered to stand part of the Bill.

Part XI, consisting of clauses 45 to 48, ordered to stand part of the Bill.

Part XII, consisting of clauses 49 to 58, ordered to stand part of the Bill.

Part XIII, consisting of clauses 59 to 61, ordered to stand part of the Bill.

Part XIV, consisting of clauses 62 and 63, ordered to stand part of the Bill.

Part XV, consisting of clauses 64 to 69.

Question proposed, That Part XV, consisting of clauses 64 to 69 stand part of the Bill.

Mr. Chairman: There is a circulated amendment to clause 66, which is in Part XV, headed "Term of Utility Certificate."

Sen. Prof. Spence: I have an amendment to clause 66 dealing with the term of utility certificate. My reason for suggesting 20 years is because the other legislation says 20 years. I have no magic about 20 years. I just feel that we should be going as far as the international agreement allows us to go in trying to give as much advantage as we can to local inventors.

Mrs. Persad-Bissessar. There is a distinction between the patent which has a 20-year protection period and what is envisaged in clause 66, which is the utility certificate. Therefore, the amount of effort, energy and creativity for the patent where the 20-year protection is given, of course, will be greater. The utility certificate therefore is for a lesser step in terms of the innovation. This is why seven years.

I cannot justify why seven, except to say why seven and not five, and why seven and not 10 or eight as the case may be. What we do know is that it must be less than the 20-year period.

I have been advised that internationally the seven-year period is the one that is given for these utility certificates and it seems to be the number of years that has been used by others. It cannot be 20 years. The longer the period of protection is the longer you prevent that particular inventive step from going into the public domain to be used by others. There is also the question of how long the technology would take before it becomes obsolete. So it may become obsolete long before the seven or 10-year period.

If the hon. Senator can provide us with the benefit of his wisdom on why he wants to put it for 14 years—

Sen. Prof. Spence: The point I was arguing was this. The whole idea of patent legislation is to give protection to the inventors. One cannot argue on the one hand, that is what one is trying to do, and on the other hand, one is arguing that it is too long. Indeed, my argument is that 20 years is too long.

Mrs. Persad-Bissessar: The whole idea of the patent legislation is not that. It is a balancing of interests. That is to say, that creations, inventions, innovativeness will come up. Others can build on those and so the society will develop. It is a balancing of the creativity of the individual with the public interest that the issue should go into the public domain. It is not just for protecting the inventor. There is also full disclosure to the public to allow it to come into the public domain so others can have the benefit of it. It is a striking of that balance. This is why it is given a time frame.

Sen. Prof. Spence: I am arguing that quite correctly we have provided the utility certificates which do not appear in any agreement which we have signed. That is a good thing that we have done because we realize that we may not be at the stage where we are making complicated inventions. Let us give as much help

as we can to those inventors. If we are arguing that they must run out quickly, then we will also have to argue that the big inventions must run out quickly too.

Mrs. Persad-Bissessar: Can we compromise, Sen. Prof. Spence, by the suggestion of 10 years instead of seven? So it would be half of the period of protection for the patent.

Sen. Prof. Spence: I think we are showing the world how they should go.

Mrs. Persad-Bissessar: We have no objections to an amendment to clause 66. Mr. Chairman, I wish to amend clause 66 as follows:

“In line 4, substitute for the word ‘seven’, the word ‘ten’”.

Question put and agreed to.

Part XV, consisting of clauses 64 to 69, as amended, ordered to stand part of the Bill.

Part XVI, consisting of clauses 70 to 72, ordered to stand part of the Bill.

Part XVII, consisting of clauses 73 to 78, ordered to stand part of the Bill.

4.30 p.m.

Part XVIII, consisting of clause 79, ordered to stand part of the Bill.

Part XIX, consisting of clauses 80 to 84, ordered to stand part of the Bill.

Part XX, consisting of clauses 85 to 91

Question proposed, That Part XX, consisting of clauses 85 to 91, stand part of the Bill.

Sen. Prof. Spence: Mr. Chairman, it seems to me that this would be a very appropriate part into which to put the security arrangements. So I want to ask the hon. Minister if she would consider having a new clause 89, which just repeats security arrangements which would have been stated in our new article 73 of the TRIPS Agreement.

Mrs. Persad-Bissessar: Regrettably, I am sorry I cannot accede to the request of the hon. Senator. I would like to accommodate his suggestions wherever

possible, but this is not one of the cases where I can do so. In terms of the advice that I have received, it is not one of the allowable exceptions, and the view is that it is covered in terms of public order within clause 1. I regret that the hon. Senator is not satisfied with that, but my advice is that I cannot so vary that particular section.

Sen. Prof. Spence: Mr. Chairman, may I make the comment that it is really not a question of satisfying me. It is a question of what is in the best interest of the people of Trinidad and Tobago. Clearly, the TRIPS Agreement had something in mind when they put in that clause that deals with national security. I am wondering whether we are inclined to have less provision for national security than the other GATT countries. Clearly, if it was—

Mrs. Persad-Bissessar: My understanding of it is, that it is not necessary so to do, Mr. Chairman and I would leave it up to the honourable Senate to make a decision.

Sen. Prof. Spence: Yes. I would not push it, but I must say that it does concern me, that we seem to be saying—who does not allow us to put in that exemption? There is nothing in the TRIPS Agreement. So who does not allow us to put it in?

Mrs. Persad-Bissessar: No. I am saying in the agreements, there are those items that are put in as allowable exclusions in terms of our obligations under the two agreements. So that they are allowable exemptions such as for public order, public morality, health and safety and so forth. There is no allowable exemption—allowable does not mean who in terms of a person, it means in terms of our treaty obligations—within the treaty. My information is, that it is not necessary so to place it within the legislation. As I said, I would leave it up to hon. Senators to make a decision.

Sen. Prof. Spence: May I just read how the clause—

Mrs. Persad-Bissessar: Sure, sure. I have read it too.

Sen. Prof. Spence: “Nothing in this agreement”—that is the rest of the TRIPS Agreement—“should be construed to require any member to furnish any information which it considers concrete to its essential security interests, or prevent any member from taking any action necessary to protect the security interest.”

So clearly, it is an important exception. I agree that we cannot change the legislation here and now, but I certainly would ask the Minister for the assurance that she would look at this, and possibly bring amendments later on. I have no doubt that it was put there deliberately, to protect national security interest.

Mrs. Persad-Bissessar: Certainly, it says “nothing in this agreement shall be construed to require a member to furnish any information”, but where in the patents legislation is one being required to furnish information?

Sen. Prof. Spence: Are you suggesting, Madam Minister, that the people who were dealing with the patents legislation, did not know what they were doing when they put in this exemption?

Mrs. Persad-Bissessar: Not at all. You see, these obligations are binding as between the states, so that they would not be required—one member cannot call upon another member to furnish information that is contrary to national security. One state which is a signatory, cannot call upon another one to please furnish me with information which is contrary to its national security. That is not what is happening within the Patents Bill, so that there is no need to put a specific exclusion for matters of national security. I did not look at it myself, but now, having read this here, I really believe the advice that I was given is the appropriate advice.

Sen. Prof. Spence: Do I take it that we do not have an amendment?

Sen. Dr. St. Cyr: Mr. Chairman, just a question on clause 89. Does this suggest that some of our Acts are not binding on the state?

Mrs. Persad-Bissessar: Yes. If you give me one moment . I had seen this in another piece of legislation.

The Interpretation Act expressly states, that unless this clause is inserted, it will not bind the state. If one wishes to bind the state, one would have to expressly state it within the legislation.

Question put and agreed to.

Part XX, consisting of clauses 85 to 91, ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment; read the third time and passed.

INDUSTRIAL DESIGNS BILL*Order for second reading.*

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Vice-President, I beg to move,

That a Bill to provide for the protection of industrial designs and related matters, be now read a second time.

*Question proposed.**Question put and agreed to.**Bill accordingly read a second time.**Bill committed to a committee of the whole Senate.**Senate in committee.**Clauses 1 to 26 ordered to stand part of the Bill.**Question put and agreed to, That the Bill be reported to the Senate.**Senate resumed.**Bill reported, without amendment; read the third time and passed.***4.50 p.m.****LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS BILL***Order for second reading read.*

The Minister of legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Vice-President, I beg to move,

That a Bill to provide for the protection of Layout-Designs (Topographies) of Integrated Circuits be now read a second time.

*Question proposed,**Question put and agreed to.**Bill accordingly read a second time.**Bill committed to a committee of the whole Senate.**Senate in Committee.**Clauses 1 to 20 ordered to stand part of the Bill.**Question put and agreed to, That the Bill be reported to the Senate.*

Senate resumed.

Bill reported, without amendments, read the third time and passed.

GEOGRAPHICAL INDICATIONS BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):

Mr. Vice-President, I beg to move,

That a Bill to provide for the protection of Geographical Indications and related matters be now read a second time.

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

5.00 p.m.

Senate in Committee.

Part I, consisting of clauses 1 and 2, ordered to stand part of the Bill.

Part II, consisting of clauses 3 to 7, ordered to stand part of the Bill.

Part III, consisting of clauses 8 to 16, ordered to stand part of the Bill.

Part IV, consisting of clauses 17 to 19, ordered to stand part of the Bill.

Part V, consisting of clause 20, ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the Senate.

Senate resumed.

Bill reported, without amendment, read the third time and passed.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Vice-President, if you would permit me just a moment to thank again the hon. Senators for the long, fruitful and productive session we have had this afternoon. I thank you for your patience and your co-operation.

ADJOURNMENT

The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung): Mr. Vice-President, before I move the adjournment, may I just indicate to this honourable Senate that it is proposed at the next sitting that the first item to be debated will be the Administration of Justice (Miscellaneous Provisions) Bill, the second will be the Immigration (Caribbean Community Skilled Nationals) Bill, the third will be the Protection Against Unfair Competition Bill and if time permits, the Protective Services (Compensation) Bill.

With that, Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday, July 16, 1996 at 1.30 p.m. sharp.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.04 p.m.