

NOTES FOR FRED MITCHELL MP

FOX HILL

ON THE CUSTOMS MANAGEMENT BILL

4th July 2011

House of Assembly

Nassau, the Bahamas

The way the Parliament of The Bahamas works under this so called efficient decisive trustworthy government is a perfect study in how not to run a Parliament.

We have a legislature whose processes and procedures are unpredictable. I should have been elsewhere this morning. Apologies to Andrew Burrows who starts.

We are gathered here this morning to pass a bill which Members were told would not be coming this morning but that debate would be begin on the bills having to do with sports.

Alas that Sports Bill was another comedy of errors with the Parliament some weeks ago stopping its consideration of the bills because it was not clear who was debating the right bill. And then surprise surprise we are told that after all it was the right bill and so we were to start again today.

Only we are not starting again today on sports but we are starting to debate the Customs Management Bill, a bill of some 400 hundred pages.

An interesting history to this as well. When it came here we were told that there were pages missing from the Bill and so could we rush, rush rush allow the other

side to present the bill, its one copy with the pages and then let the bills with all the pages catch up later.

Gracious as we are we said sure sure.

Of course the grace does not work both ways. The answer for any request from this side for grace is always Go to Hades.

No problem. Billie Holiday sings Hush Now don't complain.

And we won't but it's important to point out to the public after that disgraceful political display by the member summing up the last bill we debated in this place, that it aint all it's built up to be.

Can you imagine we are within this week to revisit two bills which were one pagers, and they had errors so can you imagine a bill with 400 hundred pages how many errors are going to be in that bill.

And the question is where are the stake holders in all of this? What have they to say about it?

We are advised that this bill is an amalgam, more like a mish mash of pulling from here and pulling from there to bring this all encompassing piece of legislation which appears to be sweeping in its scope. It suggests a new era in international trade and a new era in tax collection.

For our side, we have produced a comprehensive white paper called Vision 20/20 on the role of Foreign Affairs and Foreign Trade in the development and forward progress of our country. Before we left office, we made a decision to create a Department of Foreign Trade, headed by a director and staffed with economists

whose responsibility it was to be the implementation and monitoring unit for the country in foreign trade.

There are dramatic changes underway around in the world in trade regimes. We have signed on to the Economic Partnership Agreement (EPA) with our Cariforum partners. (Error in the fourth schedule calling Barbados “The Barbados”. There is no such country). There is Caribcan in the works, a trade deal with Caricom and Canada and eventually there must be one with the United States. So it is only fitting that legislation catches up with the times; that it be consonant with the international regimes.

Of course, we must understand what the heck we are passing. It is interesting how mercurially this government works. In fits and starts. It reflects a certain bipolarity. It is sometimes here and sometime there. Often organizations and the way they behave reflect the personalities of those who lead those organizations.

On other bills, bills of a highly technical nature like this bill, the government quite rightly provided detailed briefings on what the provisions meant for members of parliament. This is only right so that when a member of parliament is asked by his or her constituent what did you pass today he can answer truthfully what he did. Not waffle.

No such courtesy here. Just sign on the dotted line.

We also know how important that is because the people who impart information (the media) and our political opponents being the experts on propaganda that they are, are often quick to take a phrase out of context, a line or two and make it something that it isn't. So you can imagine the potential for mischief given who we are dealing with in these 400 hundred pages.

Here is what we were expecting... led to believe... the mischiefs that it was meant to cure.

First:

We expected a modernizing, reforming, consolidating statute

And we expected to have clear, precise and cogent reasons why we have to modernize, reform and consolidate.

Secondly:

The country has been prepped for a new border control regime whereby customs and immigration procedures would be combined in one agency.

Again, we expected to be given clear precise and cogent reasons why there has to be a new agency and new procedures.

Thirdly:

If you are creating a new customs regime, then one would have thought that the model to use is that of the Royal Bahamas Police Force or the Royal Bahamas Defence Force, given the law enforcement nature of the customs functions in addition to the tax functions.

Again, if this is the mischief to be cured then you would expect that the government would give clear, precise and cogent explanations for what they propose.

Fourthly,

The country expects that there will be a full and frank explanation, policy statement, expressions in the bill which would elucidate, settle, explain, act out the provisions of the international trade regimes of which we are now apart and presage the entry of the country into the World Trade Organization.

The same mantra applies here. One would have expected clear, precise and cogent explanations from the government on these matters.

Fifthly,

The bill ought to have some express reference to the protections specifically reserved for the city of Freeport.

The mantra is the same: one expects clear precise cogent explanations from the government on these matters.

Sixthly,

The question of the costs and ability of the Bahamian bureaucracy to cope with the changes that are being wrought.

The mantra is the same: one expects clear precise and cogent explanations from the government on these matters.

I can predict that what we will get will not be clear, precise or cogent.

It is as if we are performing to some undisclosed script. We have to get it done; so let's do it.

On point one:

The bill seeks to create a new authority called the Customs Authority. But it seems to me that all it does is create it simpliciter. In fact, the powers continue to reside in the Minister and in the Comptroller. So how does this reform benefit what we are doing?

Point two:

What is the answer on the question of the border control agency to which there is only a passing reference in the bill but to which there has been much p.r. talk in the country? How does this bill relate to that reform or development?

Thirdly:

The RBDF, The Prison Superintendent, the RBPF all report to the Minister and ultimately the Prime Minister. There is no intermediary. Yet this bill as a reforming statute complicates matters in the administrative regime it seems to me by creating an Authority, the powers of which seem nonexistent (although one suspects that this has something to do with the international trade agreements we have signed); than having a Comptroller who is directed by the Minister and carries out the duties assigned to him by the Minister but he must report to the Financial Secretary. At the very least this seems cumbersome. A more rational regime would seem to be that the Customs Authority becomes a body corporate with its own powers and seal and the Comptroller acts as the head of that in the way that the Governor of the Central Bank acts. But because of the revenue nature of the job, he can take specific and general directions from the minister. And since the FS is the agent of the minister it seems to me that putting the fact that he must report to the FS in the bill is redundant. In other words should we not be moving to a situation where the comptroller is less able to be politically directed by the Minister. One would have thought after that little speech by the Prime Minister last week about how he hates discretionary powers that this would have been the direction to go. Of course I don't believe a word of it. I'm trying to figure out now which FNM supporter they want to help by passing that bill on real property tax last week.

Fourth point that of the international trade regimes on to which we have signed and which we are about to join. It is well publicized how indifferent or casual this administration is about international trade; not showing up to meetings and not appearing to take the whole matter seriously, and certainly not reporting to the country what they are doing. We find out more from Neil Hartnell and Hank Ferguson than from the government about where we are headed.

Subsumed in this whole issue is the fact that the Bahamian people have to be prepped for the issues relating to tax reform and tax administration. The question of the removal of border taxes, the more intrusive nature of any of the alternatives in the affairs of the individual even value added tax. This is why this legislation this morning begs and pleads for explanations and answers.

Fifth point:

The present Customs Management Act which is to be repealed says this:

(6) For the avoidance of doubt and notwithstanding any other statutory or other provision contained in this Act or in the Hawksbill Creek Agreement, the Comptroller

shall be a person designated by the Minister to carry out any and all powers contained in clause 2(4)(f) of the Agreement.

Freeport is a place of a special nature. What does the government say today with regard to Freeport, its future, its status, the tax exemptions that apply there; the disputes with the licensees about the procedures utilized by a heavy handed customs authority in dealing with the provisions of the agreement. Is there a similar reference in this legislation or is the reference to free trade zones generic enough to cover Freeport?

And is the government still not talking to Jack Hayward? Particularly now that I'm told he's gone green!

Sixth point:

In this bill, Clause 212 will add responsibilities for intellectual property, there will be customs rulings, there will be provisions for appeals. There is to be a Customs Appeal Commission. This is a new body. I have bad experiences with these new tribunals. We have a Utilities Appeal tribunal. This tribunal was to hear appeals from the Utilities Regulatory Competition Authority. They were appointed with great fanfare. Shaking hands in the newspaper with the Attorney General but cannot do a thing because they have no rules by which to function. I don't know if they have the rules yet. The sale of BTC was to be appealed to that body but the trap is that there is no way to appeal because there is no procedure.

The more general point I make is that its fine to create all these wonderful things, and one supposes again that this is consonant with international best practices but do we have the money, the manpower and resources to carry out these functions or are we simply passing this for pretty's sake.

Further, given that the Comptroller will now have the power under Clause 8 (3) (o) to promulgate a code of conduct and to discipline officers has there been appropriate consultation with the new union for customs officer; in fact has the recognition certificate been granted to these new officer's union; or consultation with the Bahamas Public Services Union the existing bargaining agent; is this provision consonant with the constitution and the rules prescribed in the Public Service Regulations? Customs officers will continue to be public servants. The act says that they will be working for the Customs Authority Clause 6(7). Again I am not sure what the Customs Authority is because they are really still working for the public service.

Has the vexing issue of the overtime for these officers been settled to the satisfaction of the parties concerned?

What provisions are being made for the extensive training that will have to be done for the EPA and the provisions of the fourth schedule, and on intellectual property issues? Where is the public education on this point?

And then has the government really considered what they are doing here on this point of the ability of the bureaucracy to cope with the changes. In a rather

inelegantly drafted sub cause 358 (a) reads this way: “ This Act repeals the Customs Management Act (Ch 293) and other existing customs legislation...”

I don't think I have ever seen anything like that before. So that means literally then any legislation having to do with customs, any legislation that mentions customs is now repealed, including the subsidiary legislation. And when you repeal the subsidiary legislation, because there will presumably be no savings by the Interpretation and General Clauses Act, will the government ensure that Customs will be able to function because all of its forms and procedures will fall away if action is not taken to preserve them specifically.

So here we are rush, rush, rush for this so called decisive, efficient government. This side can only give qualified support to this bill. We need to hear more.

Perhaps the government will now do its job and elucidate these and other issues connected with this legislation. There is no doubt that there ought to be some further explanations from them about this.

Thank you Mr. Speaker.