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REMARKS: by Mr. Aspin

THE SOFT DRINK INTERBRAND COMPETITION ACT

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 9, 1979

● Mr. ASPIN. Mr. Speaker, I would like to take this opportunity today to speak on behalf of the Soft Drink Interbrand Competition Act (H.R. 3567). I note that in addition to myself, 287 Members have joined in cosponsoring this legislation. Identical legislation has been introduced in the Senate (S. 598), and it is cosponsored by 79 Senators. I am happy to see that the majority of the Members of the House and Senate are supporting this legislation. This certainly is good news for the predominantly small businesses which make up the soft drink industry. Let me dwell a little on the background of this legislation.

Since 1971 the soft drink industry has been in litigation with the Federal Trade Commission over the legality of vertically imposed territorial restrictions in bottlers' trademark licensing agreements. The FTC overturned an Administrative Law Judge's decision, which found these territorial exclusivity provisions to be reasonable in light of the effective interbrand competition in the soft drink industry. The FTC disagreed and differentiated between nonreusable—or premix—containers and returnable bottles. The FTC says that in the case of nonreusable containers the exclusivity provisions are an unreasonable restraint of trade. Territorial restrictions according to the FTC are not unreasonable when it comes to returnable, refillable bottles.

The FTC decision is arbitrary and will have a substantial and harmful impact on the soft drink industry.

First, it will eliminate small, independent bottlers who will not be able to compete with large bottlers. The large bottlers will supply their products directly to chain store warehouse distribution systems. This will result in sale losses to small bottlers who will be alternately forced out of business, forced to merge with each other or large bottlers, or become distribution arms for large bottlers. Unquestionably, this will result in greater concentration, and as such, higher prices to consumers.

Second, the traditional system of local bottlers having routes serving large and small accounts will disappear because small accounts will generate little profit. Once the small bottler is gone, the large bottler will in all likelihood discontinue deliveries, thereby reducing the availability of soft drinks.

Third, the FTC decision will accelerate the use of nonreturnable containers and aggravate both the ecological and energy problems. Because large bottlers can only expand their territories in nonreturnables, the most expensive packaging form in terms of consumer and energy costs, they and the chain stores and food brokers with which they will deal will move to exclusive use of one-way containers. This move will be assured by a predictable and short-lived price war favoring such containers. The environmental problems associated with nonreturnables will only be intensified.

Fourth, the FTC's speculations as to consumer savings are unrealistic. Nonreturnable containers are more expensive and an increase in the use of such containers will cause an upward price trend. Small bottlers left with marginal returnable accounts will be forced to raise prices in an effort to survive. A predictable price war among large bottlers to gain lucrative chain store and food broker accounts may exert downward pressure; but such pressure will be short-lived and unlikely to reach the ultimate consumer. I fail to see how a decision leading to greater industrial concentration will, in the long run, help the consumer. Ultimately, there will be virtually no intrabrand competition in price and de facto exclusive territories in nonreturnables will result. Further, because chain stores market their own house brands below nationally known brands, the price savings to the chains as a result of a price war will not result in savings to the consumer. A chain store will not reduce national brands to a point competitive with their own house brands.

The result will certainly be felt within and across the States. In my State, Wisconsin, soft drink sales in 1977 totaled an estimated $213.8 million. The bottlers employed 2,399 persons and had a payroll of $25.5 million. There are 85 plants located in 58 cities throughout the State. Of these 85 plants, 71 employed 50 or fewer employees. The bottlers bought goods and services from other firms estimated at $121.9 million. Soft drink bottlers paid State and local taxes estimated at $3.4 million, not to mention the taxes paid by their employees. These consequences suggest that the FTC complaint is not to be taken lightly. The loss of jobs, the loss of revenue in terms of State and local taxes, and the fate of the 71 small bottlers within my State give me the utmost concern. These people's stakes, added to the industrial effects on our economy make H.R. 3567 a matter which we should give our deliberate attention.

The soft drink industry neither requests nor requires an exemption from the antitrust laws. The legislation sets a standard applicable to the soft drink industry under which a determination of substantial and effective interbrand competition would prevent exclusive territorial licensing agreements from being found in violation of the antitrust laws. Further, the legislation would provide that because the soft drink industry has existed in the same form for 75 years, an existing trademark licensing agreement may not be subject to treble damage actions under the antitrust laws until there has been a determination that such agreement is unlawful because no interbrand competition exists.

The need for congressional action is clear regardless of the outcome of the pending litigation. Since 1971 small bottlers have been subjected to 8 years of uncertainty. They face loss of property and investment, and certainly are reluctant to risk further capital to replace existing equipment or expand operations. This uncertainty has already prompted some small businesses to sell out their small bottling plants to large bottlers, again increasing concentration. The FTC decision will eliminate a competitive system replacing it with a system featuring large economic units with very questionable benefit to the consumer and our economy. The need for legislation to create an antitrust standard that will recognize the procompetitive aspects of a contractual relationship almost a century old is imperative. It hardly seems likely that the probable destruction of a small-business-oriented industry will be determined by the Congress to benefit public economic policy.●