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REMARKS: by Mr. Evans

SOFT DRINK INTERBRAND COMPETITION ACT

HON. THOMAS B. EVANS, JR.

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 25, 1980

● Mr. EVANS of Delaware. Mr. Speaker, as one of the earliest cosponsors of the Soft Drink Interbrand Competition Act, I am pleased my colleagues in the House have passed this critical piece of legislation.

This proposal will preserve a unique and competitive industry practice—the manufacture, bottling, and distribution of trademarked soft drinks by local companies operating under territorial licenses. The soft drink bottling industry has been in an uncertain state for nearly 10 years since the Federal Trade Commission decided to challenge the territorial provisions in the bottlers trademarks licenses. After extensive hearings were conducted over a 6-week period, the administrative law judge at the FTC issued a detailed and lengthy opinion which upheld the legality of territorial provisions and trademark licenses.

The administrative law judge not only ruled that the franchise system was lawful, but it also positively fostered competition. The judge, in his 91-page ruling, went to great lengths to explain that the present system stimulates intense interbrand competition in terms of price, product innovation, and marketing techniques. The judge also found that removing the franchises would actually change the industry in several undesirable ways.

The industry reacted with disbelief when the full Commission made only token reference to the evidentiary record, overruled its own administrative law judge on a split decision, and held that the industry's territorial restrictions violated section 5 of the Federal Trade Commission Act. In making their finding, the FTC Commissioners never tried to rebut the judge's opinion that there was intense price competition in the sale of soft drinks. Understandably, the industry was outraged with the incomprehensible and inconsistent FTC ruling and promptly turned to the Federal courts to appeal this misguided bureaucratic action.

The extended length of the resulting litigation and the uncertainty created by the FTC decision has left a strong possibility that an important segment of the industry—small business—will be adversely affected before the courts can settle the anticipated appeals. For this reason, it is important that the Congress enact H.R. 3567 as soon as possible.

Without this legislation, many small bottlers would be forced out of business and the large bottlers would control the market and price the products as they pleased. The large bottling companies with regional distribution systems and large amounts of capital would move into a small marketing area and drive the local firm out of business by undercutting its prices. Without the passage of this bill, there would be greater market control by the largest bottlers. In summary, the elimination of exclusive territories will not improve competition in the industry and, as the smaller bottlers disappear, it will bring about the exact opposite result of the intent of our antitrust laws.

Mr. Speaker, this bill is designed to resolve the chaotic situation that has prevailed in the industry since the FTC decision. Specifically, H.R. 3567 provides that exclusive territorial licenses to manufacture, distribute, and sell trademarked soft drink products shall not be deemed unlawful as long as—and this is the most important provision of the bill—there is "substantial and effective competition" between the bottling companies. By insuring that both interbrand and intrabrand competition will be considered in judging the legality of a territorial license agreement, this legislation will preserve the vigorous system of competition which has prevailed in the soft drink bottling industry for over 75 years.

This is clearly not an effort by a single industry to remove itself from the application of existing antitrust standards. In repeated litigation, the legality of those contracts has been upheld. It would therefore be unfair to allow the FTC decision to stand and thereby potentially subject small bottlers to punitive damages for operating in a manner they believed to be legal.

In addition, any bottler who operated in a market without substantial and effective competition would still be subject to treble damages after the passage of this legislation. There is no permanent exemption from antitrust laws for any industry under the terms of this bill. The bill cannot be used as a cover for price fixing, horizontal market divisions, or customer or wholesale boycotts. It is simply drafted to correct the confused application of the antitrust laws by the FTC.

Mr. Speaker, this legislation is designed to insure that competition in the soft drink industry continues while allowing the industry's numerous small businesses to continue their operations. This is a worthy proposal and I hope the President will not hesitate to sign this bill into law.●