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REMARKS: by Mr. Luken

IN SUPPORT OF H.R. 3567, THE SOFT DRINK INTERBRAND COMPETITION ACT

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, July 21, 1980.

● Mr. LUKEN. Mr. Speaker, because of an error in the printing of the CONGRESSIONAL RECORD of June 24, 1980, my live remarks, in support of H.R. 3567, the Soft Drink Interbrand Competition Act, was not published with the rest of the debate on this needed bill.

I am resubmitting my comments in support of H.R. 3567. This bill which will overturn an FTC decision passed the House by an overwhelming margin, 377 to 34, demonstrates the need for this legislation. This bill was signed into law on July 9, by President Carter.

The remarks follow:

I rise in strong support of the bill, and congratulate the gentleman from Texas (Mr. HALL).

Mr. Speaker, I rise in support of H.R. 3567, the Soft Drink Interbrand Competition Act. As 1 of over 300 House cosponsors I believe that the time has come for the House to follow the lead of the Senate and overwhelmingly vote to overturn a 1978 Federal Trade Commission decision prohibiting the awarding of territorial franchises.

Just as the Congress correctly voted to bring the FTC back under congressional control this year, so we should take this step to reverse an incorrect decision by this interventionist agency. The FTC is the Federal agency charged with insuring that competition exists within our economic system. It was on the basis of competition that the FTC ruled that there may not be exclusive territorial franchises for intrabrand distribution. The reality of the FTC's decision was to invite concentration of the bottling industry among a few bottling giants.

The ultimate effect of the FTC decision would have been a loss of competition. Thousands of small businessmen would have been forced out of business. The evidence is already growing that these small businessmen are in danger. Over the years, PepsiCo., Inc., manufacturers of Pepsi sirup has reacquired franchises covering 25 percent of the Nation and Coke about 14 percent. Passage of this bill will go to great lengths to reverse this trend.

This loss of interbrand competition is not just the arguments raised by the soft drink industry. The administrative law judge (ALJ) that first heard the case at the FTC ruled that the effect of the restraint on intrabrand competition is outweighed by its effect on competition in the marketplace as a whole—interbrand competition—and that on balance the challenged territorial franchises promote competition. The Commissioners overturned the ruling of its own ALJ on this case, by a 2-to-1 vote. This action was taken despite 195 detailed findings of fact, in a 91-page initial decision.

Because of the FTC's final decison, the issue is now before the U.S. Court of Appeals for the District of Columbia. Quite obviously, this is an issue that should never have come before the Congress if the FTC had stopped meddling in an industry that is working fine.

As we all know, the ultimate beneficiary of competition in the marketplace is the consumer. Competition is the best method of insuring that the consumer can buy goods at the lowest possible price. The current method of interbrand competition more than adequately meets the consumers needs. Consider that from 1939 to 1977 the price per ounce of Coke in the 16-ounce returnable bottle has increased in price only 3 percent while the increase in the Consumer Price Index has been 344 percent.

The Congress is fully justified in overturning this FTC decision. We must realize that the FTC or any other Federal agency is not infallible. It will make mistakes and misunderstand congressional intent. The FTC is an agency that has meddled in the workings of our economy, often without any real justification. This case of interbrand competition is another instance where the Congress should send a clear message to the Commission.

This was a misguided action by the Federal Trade Commission. An affirmative vote by the Congress, large enough to preclude a Presidential veto, will maintain competition in a competitive field. Will continue to provide low prices to consumers and will reassert congressional control over a wayward Federal agency.●