BILL	DATE	PAGE(S)
S. 598	June 24, 1980	H 5534-45 5548-49

ACTION Amended & Passed under suspension of rules

SOFT DRINK INTERBRAND COMPETITION ACT

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3567) to clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws, as amended.

The Clerk read as follows:

H.R. 3567

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Soft Drink Interbrand Competition Act".

SEC. 2. Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: *Provided*, That such product is in substantial and effective competition with other products of the same general class in the relevant market or markets.

SEC. 3. Nothing in this Act shall be construed to legalize the enforcement of provisions described in section 2 of this Act in trademark licensing contracts or agreements described in that section by means of price fixing agreements, horizontal restraints of trade, or group boycotts, if such agreements, restraints, or boycotts would otherwise be unlawful.

SEC. 4. In the case of any proceeding instituted by the United States described in subsection (i) of section 5 of the Clayton Act (relating to suspension of the statute of limitations on the institution of proceedings by the United States) (15 U.S.C. 16(i)) which is pending on the date of the enactment of this Act, that subsection shall not apply with respect to any right of action referred to in that subsection based in whole or in part on any matter complained of in that proceeding consisting of the existence or enforcement of any provision described in section 2 of this Act in any trademark licensing contract or agreement described in that section.

SEC. 5. As used in this Act, the term "antitrust law" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demand a second.

Mr. EDWARDS of California. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Is the gentleman from Illinois (Mr. McCLORY) opposed to the bill?

Mr. McCLORY. Mr. Speaker, I am not opposed to it in its present form.

The SPEAKER pro tempore. Is the gentleman from California (Mr. EDWARDS) opposed to the bill?

Mr. EDWARDS of California. I am opposed to the bill, Mr. Speaker.

The SPEAKER pro tempore. The gentleman qualifies.

Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. SEIBERLING) will be recognized for 20 minutes, and the gentleman from California (Mr. EDWARDS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. RODINO), the distinguished chairman of the Committee on the Judiciary.

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, I rise to clarify my position with respect to H.R. 3567, the Soft Drink Interbrand Competition Act.

The soft drink industry has been seeking special antitrust legislation from the Congress since 1967, when a Supreme Court decision cast serious doubt on the industry's system of exclusive territorial franchises.

Doubts concerning the propriety of the exclusive territories were heightened when the Federal Trade Commission instituted its proceeding against the large syrup companies in 1971. That proceeding resulted in an adverse ruling for the bottlers, and now is awaiting a decision in a review proceeding in the U.S. Court of Appeals for the District of Columbia.

After almost a decade of litigation, conditions of lingering uncertainty in the industry have resulted in hardships to many small bottlers. It is very difficult for businessmen to make important investment decisions under such circumstances. This legislation is directed to these small bottlers.

I have had grave doubts about the wisdom of this bill. The special treatment accorded a single industry sets a bad precedent for other industries who continually urge the Congress to carve out antitrust exemptions for their own area of operations.

That precedent is all the more disturbing because the soft drink industry has not waited for the completion of administrative and judicial review processes prescribed by statute. This suggests that any litigant dissatisfied with the interim result in a judicial or administrative proceeding may at any time circumvent the orderly judicial review process by running to the Congress.

Finally, my concern with this legislation is rooted in my own firm conviction that our competitive system is the best possible insurance for the American public that it is obtaining value for its dollar. Although the precise monetary impact is difficult to measure, deviations from competition inevitably result in higher costs to American consumers. This concern was borne out by statements offered to the Subcommittee on Monopolies and Commercial Law by Mr. Alfred Kahn, the President's adviser on inflation.

Had H.R. 3567 passed through the Judiciary Committee unamended, I would be voting against it today. Because the committee was able to adopt a substitute amendment, I believe we have gone a long way toward correcting the concerns I have mentioned.

The committee has produced an amended bill that does not grant antitrust immunity to the soft drink industry. Instead, it provides a restatement of existing antitrust law applicable to exclusive territorial franchises, as set forth in the Supreme Court's 1977 GTE Sylvania decision. That decision, and this legislation, insure that the rule of reason will apply to territorial restrictions imposed by a syrup manufacturer on his bottling franchises.

Under the rule of reason analysis, a court must determine whether unreasonable restraints of trade have been imposed in violation of the Sherman Antitrust Act. That rule of reason analysis, which is preserved in this bill, requires assessment of the competitive impact of restraints on interbrand competition. At the same time, the rule of reason requires examination of the overall competitive picture to insure that competition is substantial and effective in all respects.

The committee amendment insures that this competition will be assessed

within the traditional antitrust framework of relevant geographic and product markets. The amendment also insures that practices that are considered per se violations of the antitrust laws will not be authorized under the guise of enforcing territorial restrictions that are lawful.

A colloquy during the committee markup of this bill made clear the committee's intent that the bill in no way authorizes anticompetitive pricing of soft drinks by any member of the industry. To the contrary, it is the committee's intent that the rule of reason be applied fully and fairly to authorize exclusive territories only when they operate consistently with the competitive principles of our antitrust laws.

Mr. Speaker, I am pleased that the committee has been able to report what I believe to be a much improved bill. I will vote for that bill today.

Mr. SEIBERLING. Mr. Speaker, I yield myself 3 minutes.

(Mr. SEIBERLING asked and was given permission to revise and extend his remarks.)

Mr. SEIBERLING. Mr. Speaker, the Committee on the Judiciary urges adoption of H.R. 3567 as amended. This legislation is intended to provide a clarification of the antitrust laws applicable to the soft drink industry. During the last decade, the industry has been operating in conditions of uncertainty as the result of still pending litigation brought by the Federal Trade Commission.

With the committee's amendment in the nature of a substitute, I believe that this bill will provide relief for the soft drink industry while at the same time preserving the full and benefical effects of our Nation's antitrust laws.

The industry proponents of this legislation have indicated from the outset their belief that the Federal Trade Commission failed to properly apply the rule of reason test in the Commission's 1978 decision. The industry believes that had the rule of reason been properly applied, their system of exclusive territories would have been found consistent with the antitrust laws.

The amendment adopted by the committee insures that this legislation does not create exemptions from the antitrust laws, but merely codifies or restates the rule of reason test as it would apply to the soft drink industry. Thus, the committee has added the words "in the relevant market or markets" to the proviso at the end of section 2. This addition insures that the courts will be applying traditional antitrust law concepts in defining the scope of the geographic and product markets.

The court can then proceed to consider whether competition is substantial and effective. While the Sylvania decision indicates that interbrand competition is the "primary concern" of the antitrust laws, the courts should weigh all relevant factors in determining whether the competition is effective.

The committee's amendment adds a new section 3 to the bill. This section makes certain that per se violations of the antitrust laws are not authorized under guise of enforcement of otherwise lawful territorial restrictions.

The committee's amendment also alters significantly language that would have created a permanent barrier to private enforcement suits under section 4 of the Clayton Act. With the amendment, the industry is still provided with protection against potential long term damage liability that otherwise might arise out of the FTC proceeding, which has been pending since 1971.

Mr. Speaker, the version of H.R. 3567 before the House this afternoon is that reported out by the full committee, with one additional amendment. In the rush to file the committee report last Friday, the words "and licensee" were inadvertently included in language contained in the proviso to section 2. Similarly, the words "with other products of the same general class" were inadvertently omitted from that proviso. These changes were not intended by the committee. Indeed, the committee's report, together with the supplemental and dissenting views, assumed that the bill was reported in exactly the form in which we will be voting on it this afternoon. The corrections are in the bill before the House and merely rectify the clerical oversight reflected in the Union Calendar bill and the report.

With this corrective amendment, the bill is ready for passage. I intend to vote for the amended bill because I believe it will achieve the objectives of the industry without creating an exemption from our antitrust laws.

□ 1250

Mr. EDWARDS of California. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, there are a number of good reasons why this bill should be defeated.

First, the suspension calendar should not be used for very controversial legislation, and this bill removes an entire industry from antitrust coverage.

Second, in the past few years Congress has encouraged the strengthening of the enforcement of antitrust law, not the weakening. As the Consumers Union has pointed out, competition is the tonic that keeps the economy healthy.

Third, the FTC decision has been appealed to the District of Columbia Circuit Court of Appeals. The decision can be expected within a few months. It is not proper for Congress to interrupt a pending judicial review by preempting it with a new law. This is a bad precedent and will encourage legislative relief whenever a litigant is dissatisfied with an interim judicial decision. The FTC order has been stayed pending the appeal in court. Why not await the decision?

Fourth, a law like this could start a flood of demands for equal treatment by other industries. Why not give the same franchise monopoly to the auto industry, the bicycle industry, grocers, furniture manufacturers?

Fifth, this bill benefits primarily big business. In 1950, there were more than 6,000 bottling plants. By 1960, there were less than 4,600. Presently the number barely exceeds 2,000. Under the territorial franchising system protected by this bill the soft drink industry is increasingly big business. The primary beneficiaries are gaints like Pepsi and Coca-Cola. Other bottlers insulated from competition by this bill include Liggett & Myers, General Tire & Rubber Co., ITT, Norton Simon, Inc., Beatrice Foods, and 20th Century Fox. These conglomerates can hardly be described as "Mom and Pop" establishments.

Sixth, the argument that the bill will save the returnable bottles does not stand up. As Congressman LES AUCOIN of Oregon pointed out in his testimony, under the present exclusive franchise system protected by this bill, the situation is getting worse. Throwaways now are 62 percent of the soft drink market. Returnables at 38 percent of the market, are down from 44 percent just 4 years ago. In 1966, returnables were 80 percent of the market and in 1958, 98 percent. So how can this bill, which does not mention returnables, help this discouraging trend?

Seventh, lastly, Mr. Speaker, there were communications and testimony from other businesses that the bill will do harm to consumers. Operators of soft drink vending machines in Florida and Ohio complain that they save money by centralized buying, outlawed by this bill. What is a vending machine operator to do if he has machines in service stations on a highway that goes through several exclusve territories, each protected bottler charging a different price?

Seven years ago the FTC estimated that the exclusive territory system in the soft drink industry cost the consumer a quarter billion dollars per year. Can you imagine, with inflation, how much it is costing today?

For this and the other reasons I have outlined I suggest a "no" vote.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Ohio, of course.

Mr. SEIBERLING. Well, Mr. Speaker, the gentleman and I are so accustomed to being on the same side of practically every issue, that it is a little unusual to be on the other side.

The SPEAKER pro tempore. The time of the gentleman from California (Mr. EDWARDS) has expired.

Mr. EDWARDS of California. Mr. Speaker, I yield myself 1 additional minute.

Mr. SEIBERLING. Mr. Speaker, if the gentleman will yield further, let me simply say this. Unless the committee had made the amendments it did on this bill, I would be opposing it as the gentleman has; but it is my personal feeling, as a person who has some familiarity with the antitrust laws, that this bill is about as close as you can get to the decision of the Supreme Court in the Sylvania case in legislative form. For that reason, I am supporting the bill, instead of opposing it.

Mr. EDWARDS of California. Mr. Speaker, I appreciate that. I thank the gentleman.

Mr. SEIBERLING. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. LEDERER).

(Mr. LEDERER asked and was given

permission to revise and extend his remarks.)

Mr. LEDERER. Mr. Speaker, I rise in support of this legislation. H.R. 3567 is a bill that will prohibit the Federal Trade Commission from eliminating territorial rights from soft drink distributors.

The FTC claims that their ruling is necessary because the soft drink industry is not competitive. However, at the present time, there are 2,150 independently owned bottling operations in the United States. Even with our current runaway inflation, cola prices are virtually the same as they were in 1939.

In 1939, all cola brands, on the average, cost seventy-seven one-hundredths (0.77) of 1 cent per ounce; today, the average cost is just seventy-nine one-hundredths (0.79) of 1 cent per ounce. Obviously, these relatively low prices exemplify the competitiveness of this market.

If the FTC decision is allowed to stand, many small, independent distributors will be eliminated. This will occur primarily because of interbrand competition. Large volume operations, especially the national company-owned bottlers, will have a great advantage over the smaller, independent bottlers of the same brand. This advantage will eventually drive the small independent bottlers out of business. As a result, the national soft drink brands will be sold only by a few large independent distributors and the company-owned distributors. The bottom line is that the number of distributors will be decreased significantly.

In addition, many small local bottlers, who sell their own brands and not the national brands, will be harmed if H.R. 3567 is not approved. Many of these bottlers exist because they undersell the national brands. I think it is safe to predict that if H.R. 3567 is not passed, then national brand prices will initially be lowered. This will happen because the large volume bottlers will be squeezing the smaller bottlers of the same brand out of business. These lower prices of the national brands will also hurt the local bottlers and their independent brands of soft drinks. They will be forced to close down their operations.

However, these low prices of the national brands will not last. Once these large bottlers secure their hold on the market, prices will again rise. Without any competition, they will be free to operate as they choose.

I submit that this will only harm the consumer. H.R. 3567 will protect consumers. If this legislation is not approved, then prices will only increase in the long term. Once the large distributors control the market, prices will only rise. Consumers will have less choices in the soda market.

I urge my colleagues to support H.R. 3567. The soft drink industry has functioned competitively under territorial agreements for over 75 years. Prices have remained relatively stable and the consumers have had a wide variety of soft drinks from which to choose. Letting the FTC ruling stand will only create another centralized American industry with few brands and higher prices.

Mr. SEIBERLING. Mr. Speaker, I yield 5 minutes to the gentleman from Texas (Mr. HALL).

(Mr. HALL of Texas asked and was given permission to revise and extend his remarks.)

Mr. HALL of Texas. Mr. Speaker, as a primary proponent of the Soft Drink Interbrand Competition Act, I rise to support the bill reported by the Judiciary Committee. H.R. 3567 has been desperately needed to remedy the abundant confusion caused by the FIC's holdings in the Coca-Cola and Pepsi-Cola cases. The basic purpose of the bill is to specify the legal standard under which bottler territories are to be tested. The bill states a very simple, but very effective, standard: if substantial and effective interbrand competition exists, that settles the matter and the territories are legal. In the absence of substantial and effective competition, normal antitrust standards apply.

H.R. 3567 states this new standard to extricate the soft drink cases from the pitfalls into which the FTC analysis has led them. The FTC's preoccupation with intrabrand competition has always been ill-advised. Of course, exclusive territories confine bottlers to their designated territories. But the whole point is that granting territories brings the bottlers' competitive efforts to a focus, gives each bottler responsibility for a specific territory, and rewards the bottler for work well done. The critical question is: How competitive is the marketplace? H.R. 3567 says that, if there is substantial and effective interbrand competition, the territories are lawful.

Several changes were made in the bill as reported in order to clarify possible ambiguities. As introduced, section 2 of the bill referred to competition "with other products of the same general class." Because it was not entirely clear that competition between the trademarked soft drink product sold by the bottler and other products had to take place in the territory being challenged, we added the words "In the relevant market or markets" to insure that the inquiry as to competition will relate to the geographic market being examined. This additional language, however, is not intended in any way to limit the scope of the language of section 2 of the bill as introduced.

Turning to the new section 3 of the bill, added during committee consideration, I want to point out that this section responds to concerns about the use of specific practices to enforce bottler territories. The practices enumerated in section 3 have long been recognized to be per se illegal. The inclusion of section 3 is intended solely to clarify the point that H.R. 3567 is not intended to authorize the use of these practices as enforcement techniques. Section 3 was carefully drafted to accomplish that purpose without undercutting the objectives of the bill.

Thus, section 3 is not to be construed in any way to vitiate the trust of section 2. Section 2 contemplates not only the existence but also the enforcement of bottler territories.

Likewise, H.R. 3567 contemplates that franchise companies may become aware of territorial violations as a result of complaints from one or more bottlers and that franchise companies may choose to enforce their territorial provisions. Such activity would not fall within the specific practices enumerated in section 3, and would clearly constitute legitimate enforcement within the contemplation of section 2.

In short, section 3 will not require courts to regard communications and complaints among franchise companies and bottlers regarding territorial violations as horizontal conspiracies.

H.R. 3567 represents sound legislation consistent with antitrust principles. It will remedy a manifest injustice and put to rest the many years of uncertainty which the soft drink industry has faced as the result of the FTC proceedings. I urge my colleagues to vote in favor of the bill as reported by the Judiciary Committee.

I would like to take this opportunity to thank the chairman of the Judiciary Committee as well as other members for their support and cooperation in bringing this bill to the floor.

Mr. VOLKMER. Mr. Speaker, will the gentleman yield?

Mr. HALL of Texas. I yield to the gentleman from Missouri.

(Mr. VOLKMER asked and was given permission to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, I rise today in strong support of H.R. 3567, The Soft Drink Interbrand Competition Act.

This needed legislation is in direct response to a 1978 Federal Trade Commission decision holding the system of exclusive territories for soft drink bottlers to be illegal under the antitrust laws, so far as they pertain to returnable containers. This decision failed to take into account the very nature of the soft drink industry and was incorrect as a matter of law.

The soft drink industry is composed of literally thousands of small companies and plants, which serve local communities. Typically less than 50 employees per plant are involved. For these small plants to survive it is necessary that this legislation be adopted. The small plant operator has been running his business in a state of uncertainty ever since the FTC complaint was filed in 1971. They will continue to do so until the appellate courts decide the validity of the FTC decision. Awaiting this decision is inappropriate because additional litigation is highly probable and further delay will cause many small bottlers to close their business. The issue must be settled once and for all.

The small bottler must have the protection of exclusive franchises on returnable containers in order to preserve his "stock"—that is the returnable container. Testimony indicates that a returnable can be used 20 to 25 times before it needs to be replaced. Without assurance of the return of his stock, replacement costs will force many bot-

tlers out of business and end up raising the cost to the consumer.

Mr. Speaker, this is urgently needed legislation and I urge its adoption.

□ 1300

Mr. BROYHILL. Mr. Speaker, will the gentleman yield?

Mr. HALL of Texas. I yield to the gentleman.

(Mr. BROYHILL asked and was given permission to revise and extend his remarks.)

Mr. BROYHILL. Mr. Speaker, I rise in strong support of H.R. 3567, the Soft Drink Interbrand Competition Act, which clarifies that certain territorial provisions of licenses to manufacture, distribute and sell trademarked soft drink products are lawful under the antitrust statutes.

It has been apparent for some time that there is a need for the Congress to address this issue. Despite the fact that the territorial franchise system for trademarked soft drinks has been utilized for three-quarters of a century, in mid-1971 the Federal Trade Commission charged that seven soft drink syrup manufacturers were illegally issuing licenses which restricted bottlers to sales in a specific area. An administrative law judge held in October of 1975 that the exclusive territorial arrangements do not constitute an illegal restraint on competition in violation of section 5 of the Federal Trade Commission Act. That decision was overturned by the Commission in 1978.

Largely as a response to the FTC action, I joined with a number of my colleagues in sponsoring legislation to clarify that these exclusive territorial arrangements are not illegal. In fact, in the 94th Congress, the Interstate and Foreign Commerce Committee reported a territorial franchise bill, H.R. 6684. Unfortunately, that bill died at the end of the Congress.

Today we have an opportunity to rectify that situation. The Judiciary Committee has reported the bill, and a version of the bill has passed the Senate. All that remains is for the House to give its final stamp of approval.

I believe that enactment of this legislation is necessary to protect the smaller bottlers, who often do not have the geographical and financial advantages enjoyed by the larger bottlers. I urge my colleagues to support H.R. 3567 so that it can move forward without further delay.

Mr. EDWARDS of California. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. CONYERS), a member of the Judiciary Committee.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, first of all I want to begin by commending my colleagues on the Judiciary Committee, the gentleman from California (Mr. EDWARDS) for having the courage to bring this debate to the floor. It almost did not even get here.

Therefore, I will ask every Member to kindly, before he casts his ballot, read the dissenting views on page 14 of the committee report to that he will have satisfied himself or herself that a vote against this incredible maneuver is one that is well founded and follows the excellent reasoning already set forward by the gentleman from California.

Mention has been made that the defects in this bill have been cured in the Judiciary Committee. That is not true. As it was reported in the media, it moved through the full committee with a few changes, so minor that the bottlers and their friends only smiled.

The bill is special interest legislation, pure and simple, and in its worst form. The soft drink bottling industry is not an infant or struggling industry. Large multiplant bottlers, many owned by conglomerates, dominate the industry. Small bottlers, rather than being protected, are being consumed. While there were 6,000 bottlers in 1950, there are less than 2,000 today. Coca-Cola owns franchises which sell 15 percent of Coca-Cola's national sales, and the figure for Pepsi-Cola owned franchises is 20 percent.

The obvious special interest favoritism and the concomitant costs to the consumer are not the only harms of H.R. 3567. This bill will disrupt the orderly judicial review process created by the Congress for agency decisions. The ABA Antitrust Section recently passed a resolution which urged Congress not to reverse Federal Trade Commission decisions until administrative and judicial review are complete. If we pass this legislation, we are inviting countless other litigants before our agencies and courts to run to the Congress each time they are dissatisfied with an interim result of litigation.

The industry alleges this legislation is absolutely necessary to save the small "Mom and Pop" bottlers from being wiped out. Yet the FTC found that some small bottlers were among the most efficient in the industry—it is the present system of artificial restraints that prevents such bottlers from growing to their competitive limits.

The Federal Trade Commission's decision, should it be upheld in the Court of Appeals, will result in substantial cost savings for American consumers. H.R. 3567, even in its amended form, could well threaten those gains. If the industry succeeds in overturning the Commission holding, the winner will be the soft drink industry, and particularly the large multiplant firms that dominate that industry. The American public will be the loser.

So we are confronted here with creating a major exception to antitrust laws at precisely the time that the Department of Justice is trying to move in a more important way on antitrust provisions.

My colleagues, I urge you to reconsider this incredible move that has trapped the Judiciary Committee and is one of the few times that we have had a discharge petition operating.

There are several significant organizations and individuals that oppose this legislation. Opposed to the legislation are the National Association of Attorneys General, the Department of Justice, the Federal Trade Commission, the Consumers Union, the American Bar Association, the Consumers Federation of America, independent marketing specialists, a number of law professors and antitrust experts, customers of the soft drink bottlers, and even a business-oriented publication which has editorialized against the bill.

I urge my colleagues to carefully read the dissenting views and then cast their ballots in light of their judgment and belief that we are seriously encroaching upon antitrust laws.

Mr. EDWARDS of California. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. STARK).

(Mr. STARK asked and was given permission to revise and extend his remarks.)

Mr. STARK. Mr. Speaker, I want to speak today in opposition to this bill, not as a lawyer, but as somebody who has stood in this well often to oppose special interest legislation.

We are here today legislating on a bill that will help a $13 billion industry. As the Washington Post wrote last week, after the congressional favors that we have passed out to the banks and the automobile companies, the morticians, the oil companies, this "root beer express" is going to slosh through Congress to the detriment of the consumers, to the detriment of the small retailor, to the detriment of small business, and only to the benefit of the major conglomerates in the food processing industry in this country.

This industry, which has mounted a lobbying effort to humiliate Members of the Congress, uncorked the 36-ounce family-sized lobbying efforts to intimidate, to remind Members of campaign contributions to come, of redistricting to come in the States, and with thinly veiled criticism and suggested threats to move this bill. It has moved on, over the objections of some of the most responsible legislators in the antitrust field.

It has been said that this will do nothing but aid conglomerates to continue to dominate a market which is an ideal market for small entrants. The bottling business is a low entry level business. It is one in which competition can thrive. It is one in which family businesses could grow if they were not precluded from buying the syrup which is protected by heavy, broad, national advertising campaigns.

It would make some sense if the proponents of this bill could come to my colleagues and show them one bottling company of a major soft drink franchise in this country that is losing money, but they cannot. They are so intensely profitalbe that the competition to buy them out and add them to the conglomerates is keeping the Wall Street business brokers jumping.

I urge my colleagues to think about the consumer. For those of my colleagues who talk about free enterprise, my colleagues on the other side of the aisle who talk about free enterprise and talk about stifling government regulation, let us see some free enterprise, and let us see some people have the right to fail, as well as some small entrants getting in and having the right to profit in this business.

I urge a "no" vote on this bill.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. STARK. I yield to the gentleman.

Mr. PICKLE. I appreciate the gentleman yielding. I rise in strong support of this bill.

Ten years ago, when I was on the Committee on Interstate and Foreign Commerce I sponsored a bill similar to this bill. For years we have been trying to get relief for the little bottler. Now is our time and chance to help the 2,000 small bottlers in the United States. It is a pro-consumer bill and ought to be passed. This is not a bill for the big bottler. If the little bottler is not given some protection he will be out of business in a few years. This bill does not give the small bottler a monopoly at all. It just keeps him in business. Otherwise, the big national bottlers will take over. It is imperative that we suspend the rules and pass this bill.

I compliment Mr. HALL for his superb work on this measure.

Mr. SEIBERLING. Mr. Speaker, I yield 9 minutes to the gentleman from Illinois (Mr. MCCLORY).

Mr. MCCLORY. I thank the gentleman for yielding, and I yield myself 3 minutes.

Mr. Speaker, I rise in support of H.R. 3567. The purpose of this legislation is to codify the rule of reason standard as promulgated by the Supreme Court in the GTE-Sylvania case and require its application to the long standing exclusive territorial arrangements of the soft drink industry. The rule of reason is a flexible judicial rule for evaluating whether certain contracts are procompetitive or anticompetitive. Under this standard the court takes into account all relevant factors. Thus intraband restraints may be permitted where, in the circumstances particular to the case, there are advantages of interbrand competition which outweigh the disadvantages of the intrabrand restraints.

However, some have recently argued that the lack of intrabrand competition is not a factor for the courts to consider under this bill. This argument misstates the rule of reason and betrays the legislative history of this legislation. Intrabrand competition is clearly a factor; that is why the bill requires "substantial and effective" interbrand competition—a higher than normal competition—to offset the restraints on intrabrand competition.

As a matter of logic, it cannot be both ways. You cannot on the one hand say that the bill embraces the rule of reason which requires that all pros and cons be weighed and on the other hand declare that only some factors, undoubtedly those considered favorable, be considered. This bill has been before us for a year and has been analyzed and debated at length. We know what it does. Last minute attempts to transform this codification of the rule of reason into anything else are not persuasive.

Mr. Speaker, it is well known that the committee was nearly discharged from consideration of this legislation. While I encouraged and exhorted prompt action on this legislation for months, once I received that assurance I counseled against the discharge of the committee because I believed that there were technical problems with this legislation which committee deliberations might remedy.

I believe events proved me right. We have saved this body some embarrassment. We have made sure that we are not confusing the antitrust laws that will be written in the future. We have corrected a provision that denied victims of antitrust wrongs their traditional right to recover. We have made clear that the untested and general language of the bill does not contain hidden authorizations for conduct such as price fixing and the like. And we have altered the proviso considerably so that the courts must now assess whether the advantages of a truly competitive market are available to those who do business with softdrink licensees. We did this by requiring that the courts look at all the "relevant markets" to determine if the interbrand competition is so substantial and effective as to outweigh the impact on competition of intrabrand restraints.

"Relevant markets" is a term in antitrust law referring to both geographic markets and to product markets. Under the geographic market test, the court could take into account the lack of interbrand competition resulting from intrabrand restraints, such as that the Coke bottler in an area A cannot compete with the Pepsi bottler in area B. Under the product market test, the court could focus on those particular products that consumers would be likely to consider as alternatives. This was made clear in committee debate on the substitute when the gentleman from Texas (Mr. HALL) assured the gentleman from Kentucky (Mr. MAZZOLI) that the "relevant market" language satisfied the latter's concern that colas should be held to compete with colas, noncolas with noncolas, and fruit drinks with fruit drinks. And the courts have made this clear as well. In short, the relevant markets include relevant submarkets.

I make these points to indicate that under the reported bill the Court's analysis is not to be mechanical and automatic. The proviso is not rhetoric wrapped around an exemption. The results may vary from case to case depending on the state of competition shown to exist in each case.

The rule of reason is aptly named. It will enable the courts to give the American people the benefits of competition while holding them harmless from whatever abuses of intrabrand restraints may occur. There is nothing unreasonable about the rule of reason. Consequently, I urge the adoption of the amended bill.

□ 1310

Mr. HAMMERSCHMIDT. Mr. Speaker, will the gentleman yield?

Mr. MCCLORY. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. I thank the gentleman for yielding.

Mr. Speaker, the response to the Soft Drink Interbrand Competition Act has been overwhelming. As one of the 319 Members who have cosponsored H.R. 3567, I rise to express my strong support for its prompt passage.

This legislation is vital to thousands of small soft drink bottlers throughout the country. We have been trying to help these small businessmen for years, as far back as 1971. Hundreds of businesses, many of them family-owned, are being crippled by almost 8 years of uncertainty. This bill will prompt interbrand competition while protecting the small bottler, who is the cornerstone of the industry.

I originally sponsored the Soft Drink Interbrand Competition Act to preserve an industry whose very existence is threatened by short-sighted actions on the part of the Federal Trade Commission. Its purpose is to codify the rule of reason standard enunciated by the Supreme Court in the GTE-Sylvania case for the soft drink industry. It provides that licensing agreements between syrup manufacturers and soft drink bottlers shall not be held unlawful under the antitrust laws, provided that the challenged product is in "substantial and effective competition with other products of the same general class in the relevant market or markets."

The legislation was made necessary by a decision of the Federal Trade Commission holding such contracts to be unlawful under the antitrust laws with respect to nonrefillable containers. The legislation rectifies a misapplication of the rule of reason standard by the FTC, but does not create an exemption from the antitrust laws.

In 1971, the FTC brought a series of cases challenging the territorial provisions contained in bottlers' trademark licenses as unfair methods of competition in violation of section 5 of the Federal Trade Commission Act. The Commission conducted a lengthy hearing regarding the Coca-Cola franchise system apparently to satisfy widespread congressional concern that the soft drink industry should be permitted to present its case in a comprehensive set of hearings. At the end of the hearing, the administrative law judge who heard the testimony ruled not only that Coca-Cola's franchise system is lawful, but also that it positively fosters competition. The judge made extensive findings to the effect that there is intense interbrand competition in this industry in terms of price, product innovation, and marketing techniques.

However, with only token references to the evidentiary record, the FTC overruled the administrative law judge and held that the Coca-Cola and Pepsi territorial provisions violated the Federal Trade Commission Act. In doing so, the FTC substantially ignored the massive record of evidence of intense competition within the industry. For example, the FTC never tried to rebut the extensive evidence of intense price competition in the sale of soft drinks; it simply held that without territorial restraints there would be more competitors and, therefore, more competition. No attention was paid to the evidence that territories stimulate local bottlers' competitive efforts. In the same vein, the FTC minimized the abundant evidence of technological and product innovation in the soft drink industry and assumed that

without territories there would be even more innovation. Paradoxically, the FTC found that bottler territories were impermissible in the distribution of soft drinks in nonreturnable containers, but were permissible in connection with returnable bottles.

In summary, the FTC decision is not supported by the evidentiary record, and the hearing provided by the FTC seems to have played little part in the Commission's determination to condemn the territorial arrangements.

While the FTC Coca-Cola decision pays token attention to the Supreme Court's recent decision in Continental T.V., Inc. against GTE Sylvania, Inc., the FTC actually ignored the Court's holding that vertical nonprice restrictions are to be tested under the rule of reason. The history of the FTC proceeding demonstrates the inadequacy of a simple rule of reason bill and the need for clarification of the standard to be applied.

Seven years have passed since the soft drink cases were brought by the FTC; the end of these cases is not in sight. Indeed, the FTC's multilation of the rule of reason in the Coca-Cola case may increase the length of the litigation. Meanwhile, the industry is plunged into uncertainty and turmoil. Many bottlers are torn by the conflicting pressures of their contract obligations, on the one hand and threats by major chain store customers, on the other hand. It is uncertain that these problems can be resolved in the Courts of Appeals or the Supreme Court.

The bottlers need the help of Congress, but more importantly, the consumer needs assistance. The Federal Trade Commission decision that eliminates territorial restrictions of independent franchised soft drink bottlers has made these bottlers an endangered species. In my judgment, these bottlers have shown conclusively that the elimination of the highly competitive independent, franchised soft dring bottler system will have a disastrous effect on the American consumer. This is the same consumer the FTC intends to protect.

I ask my colleagues to lend their support to the local franchised soft drink bottlers in their districts, who in fact belong to one of the most highly competitive systems in the world.

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HALL of Texas. Mr. Speaker, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Texas.

Mr. HALL of Texas. I thank the gentleman for yielding. I would like to thank the gentleman from Illinois for the great help that he gave to us on this bill.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. WEISS).

(Mr. WEISS asked and was given permission to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, whatever happened to the free enterprise system? Whatever happened to the concept of competition?

Mr. Speaker, I rise in opposition to the misnamed Soft Drink Interbrand Competition Act. I believe that this legislation could well set us on a course of special interest legislation from which there would be no return.

This bill is neither "procompetition nor proconsumer legislation" as its proponents would suggest, but rather an attempt to exempt an entire industry from the antitrust standards enacted by this Congress many years ago. Nor will the bill aid its pretended beneficiaries—small bottlers. This legislation will not result in any reduction in the already inflated cost of soft drinks to the consumer. This is inflationary, special interest legislation which is unwarranted and directly contrary to the public good.

Antitrust laws are premised upon the belief that true competition should be fostered in all industries, unless there can be a very strong showing that the overriding public interest is served by the granting of limited exceptions. As a matter of economic principle I believe that unregulated exceptions to the antitrust laws, in the form of monopolies or oligopolies, such as are in evidence in this industry, preclude real price and service competition, insuring artificially high profits and prices. Luckily, the Congress has been extremely reluctant to grant individual exceptions to the antitrust laws, and I believe that the soft drink industry has fallen far short of proving the need for any deviance from this policy.

What is at issue is the antitrust standard which will be used to determine the legality of exclusive territorial franchises which predominate this industry. There has been substantial litigation in this field, the most recent being the Supreme Court decision in the *Continental T.V.* v. *GTE Sylvania*, 433 U.S. 35 (1977). In that case, the Court adopted what is known as a "rule of reason" test, overturning a previous standard of "per se" illegality, a test which requires a balancing of all competitive factors in the determination of antitrust exemptions.

It is indeed interesting to note that it is this very "rule of reason" test which was sought by the industry in legislation introduced in the 92d (S. 3133), 93d (S. 978) and 94th (S. 3421, H.R. 6684) Congresses, but which has now been abandoned by the industry after its adoption by the Supreme Court and its use in the FTC decision in this very case.

Now the industry comes to the Congress seeking exemption from the "rule of reason" standard and its replacement of an undefined standard of "substantial and effective competition with other products of the same general class." This standard is a significant reduction in the antitrust tests which would, I believe, have the effect of totally exempting this industry from Federal antitrust statutes. As the Department of Justice has already stated before this subcommittee, "these standards would unfairly deny the consuming public the protection of the antitrust laws" in order to protect business interests. This is clearly not the intention of the framers of the Federal antitrust legislation.

But what business interests is it that are being protected? Is it the small "mom and pop" local bottler as is claimed by the bill's proponents, or is it the large concentrated corporation which already controls through direct ownership and the "piggyback" system, a major portion of the industry sales?

It is well known that the soft drink industry becomes increasingly more concentrated with each passing day—even under the present territorial franchise system. From a high of somewhere around 7,000 production sites in the 1950's, the industry shrank to an estimated 2,096 plants in 1978, a trend which even the industry states is irreversible. Already the 21 largest Coke, 10 largest Pepsi, and 10 largest 7-Up bottlers serve respectively 58, 45, and 37 percent of the U.S. population. In large metropolitan areas a very small number of bottlers control the distribution system through the sale of not only their own brands, but additionally by the piggybacking of other brands.

It simply cannot be said with any validity that passage of this bill will guarantee survival of the small bottler. All economic data and the history of the industry point to the continuing decrease in the numbers of bottlers, regardless of the system of distribution. Clearly, the "mom and pop" bottler has little long-range future whether or not this bill is passed.

In the FTC's determination of this case much of the discussion was focused upon the degree of interbrand competition, and compared with the clear lack of intrabrand competition in the industry. But competition among brands is almost meaningless unless those brands are produced by different companies. In the soft drink industry, this is not the case. Quite the contrary, it is more likely that one syrup manufacturer will have a number of different brands, and that a dozen or two dozen soft drink brands might will be distributed at the local level by only a few bottling companies. Competition of this type is more corporate imagination than market reality.

The FTC did not disturb the exclusive territorial relationships with regard to returnable bottles. This conclusion is supported by additional market facts not present in the nonreturnable situation—primarily the concepts of bottle trippage—which is the average number of reuses of bottles—and recapture. These factors, which clearly and directly affect the investment costs to the bottler, would be extremely difficult to control without the territorial system.

The absence of that system for returnables in turn would directly raise the soft drink's cost to consumers.

It is only in this last situation, then, where elimination of the exclusive franchise arrangement would result in increased consumer prices that business

protection offered by H.R. 3567 should be tolerated.

In conclusion, I submit that the soft drink industry has not met that burden of justification for this special interest legislation. It is contrary to a free competitive economy—and sets a dangerous precedent for other industries, with sufficient lobbying organization, who will doubtless follow this lead should the Congress adopt these proposals. I fervently urge the House to reject H.R. 3567 as presently drafted.

Mr. McCLORY. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. RAILSBACK).

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

[Mr. RAILSBACK addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. EDWARDS of California. Mr. Speaker, I yield 2 minutes to the gentleman from Vermont (Mr. JEFFORDS).

(Mr. JEFFORDS asked and was given permission to revise and extend his remarks.)

Mr. JEFFORDS. Mr. Speaker, I rise in opposition to the present situation in the sense of suspending the rules. I think that this is a bill that ought to have a chance to be floor debated. Amendments should be allowed on the House floor. I will oppose the bill for that particular reason. Even though I am a cosponsor of the bill, I do think it can be improved.

This situation came up because the FTC ruled that the franchising arrangements were unlawful unless they were utilized for the purpose of providing returnable containers. The primary reason for that exclusion was the fact that the industry itself has been coming to Congress each year and testifying that they needed the franchising arrangements in order to have returnable bottles and returnable containers. I will quote for you from the president of Coca-Cola:

> Exclusive territorial arrangements for all types of containers are essential to preserving bottler interest in using refillable containers.

A number of us—and there was considerable evidence given to the subcommittee—asked to have an amendment attached which would not take the extreme position of the FTC but a more moderate position. Our amendment would say, all right, if you are going to get a franchising agreement, then you should increase your use of refillables at least on an increasing basis to the national average—nothing very dramatic. Such an approach would provide the bottler himself with more profits, cheaper beverages to the consumer, save energy, save resources, reduce litter, and move us away from our throwaway society. These are the advantages of refillables. The problem is that the chainstores in many cases are discouraging the franchised people from selling returnables because they do not want to handle them. The only way we can help the bottler out by making sure these refillables are available is to insist that it is part of the franchising arrangement.

Mr. HALL of Texas. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Texas.

Mr. HALL of Texas. I thank the gentleman for yielding. The gentleman stated that there was evidence that the chain stores would not allow returnables. I read very closely the order of the administrative law judge, and I found no evidence at all where any chain store ever refused to allow returnable bottles in an exchange or purchase. I wish to point that out for the gentleman's benefit.

Mr. JEFFORDS. The information I have from bottlers leads me to a different conclusion. Let me continue.

Mr. Speaker, I supported this legislation originally because I felt it would help to protect the refundable container in the marketplace. Today, however, I am convinced that the bill, as presently written, does not assist as it could, in insuring that the returnable container increases in use. Unfortunately, the consumers and the general public are going to get the short end of the deal in this special antitrust exemption being granted to the soft drink industry. Had this bill not been scheduled on the Suspension Calendar, I would be offering an amendment with my colleague from Oregon (Mr. AuCOIN) to address this weakness in the legislation. Unfortunately, on suspension, Members will not be able to consider our amendment which would have insured the option for consumers to purchase their beverages in returnable containers.

The legislative history of H.R. 3567 clearly demonstrates that the preservation of the returnable container has been an ongoing concern of the soft drink industry, well-known proponents of the legislation. As strong supporters of national deposit legislation, Mr. AuCOIN and I were eager and willing to work with them to insure that this objective was indeed met. Our amendment was simple and reasonable, requiring that a minimal percentage of each franchise's sales be made available in returnable form if the exclusive territorial rights were to be granted. By 1981, we were requiring 10 percent—a figure which all of the regions in the country are presently meeting—20 percent by 1982, and 35 percent by 1983. This latter figure of 35 percent is even below the national average, which the National Soft Drink Association's latest printed report states to be 37.8 percent.

Given these figures, we remain convinced that our proposal was quite conservative and deserved consideration by the full House. We were not being too demanding by asking for a 100-percent returnable system, though we may have wanted to. Nor were we as severe as the FTC's ruling which, as you know, stated that exclusive territorial rights could only be retained for the sale of returnable containers. Our proposal was simply a reasonable attempt to move all franchises toward the national average for returnable containers. I might add, though, that in view of the cost-saving arguments put forth by the industry in support of the returnable system, the FTC ruling was not without merit.

Because of this cost-saving factor, Mr. AuCOIN and I contend that the industry would have been persuaded to meets its "refundable" requirement through the use of the less expensive refillable system. Consumers would thus have been guaranteed the option of purchasing their beverages in this less-expensive container, and competition between the local and name-brand soft drinks would have been enhanced as the price differential between the two would have been reduced.

The Subcommittee on Monopolies and Commercial Law heard from numerous witnesses in the soft drink industry. In addition to arguing that the legislation was necessary to protect the small businessmen, they also contended that it was necessary to protect the refundable container, and thus promote consumer choice. As just one example, Mr. J. Lucian Smith, a past president of Coca-Cola and a present member of the board of directors and consultant to the company, made this point when he stated:

> Exclusive territorial arrangements for all types of containers are essential to preserving bottler interest in using refillable containers.

I could cite testimony from several other witnesses which stress this same point.

Unfortunately, Mr. Speaker, when you consider the following figures, the option of purchasing soft drinks in returnable containers is rapidly disappearing. Back in 1947, 100 percent of the soft drinks manufactured were sold in returnable bottles. Using the National Soft Drink Association's latest printed figures, refundables nationwide comprised only 37.8 percent of the industry's market in 1976 as compared to 44 percent in 1976. Within the northeastern region, which includes my home State of Vermont as well as New York, Delaware, Pennsylvania, the District of Columbia, Maryland, and the other New England States, returnable containers comprised only 10.2 percent of the market in 1978. In 1976, this same percentage for the northeastern region was 23 percent. Thus, in just 2 years, there was a reduction by more than 50 percent. In fact, in some areas, returnables already compromise less than 1 percent of the market.

Yet where returnables are available, there is widespread consumer acceptance and support for the refundable container. Six States now have a 100-percent returnable system in effect—Vermont, Oregon, Maine, Michigan, Iowa, and Connecticut. Public opinion polls in Vermont and Oregon—the two States with the longest experience with deposit legislation, show support by more than 90 percent of the public. In 1979, an effort to repeal the Maine law was rejected by 84 percent of the voters, despite its narrow passage in 1976 with only 58 percent of the vote. Clearly, where consumers have had a chance to experience the law, they have liked it, and support for the measure has grown.

Mr. Speaker, the consumer will be the primary loser as a result of the dwindling availability of the returnable container. Savings of up to 30 percent can be realized through the returnable system. This fact was also acknowledged by

Mr. Smith in testimony before the House. He stated:

Coca Cola sold in food stores in nonreturnable packges is priced, on the average, 33 percent higher than in returnable bottles. The difference lies essentially in the different costs of packaging; the cost of returnables is spread over many uses; the cost of nonreturnables is absorbed in one use.

Several Vermont distributors have been quite frank in discussing the economics of refillables with me. One distributor says his gross profit with refillables is now 53 percent, compared to a historic gross profit of about 18 percent with nonreturnable bottles and cans before the deposit law went into effect. Vermont consumers who use returnable containers also realize a significant savings, approximately $80 annually per family, as a direct result of our deposit law. This is possible because beverages purchased in refillable containers cost 10 to 30 percent less. Further marketing of the nonreturnable container, however, will cost the consumer.

Below I have listed some of the other costs to be incurred should the returnable container disappear from the marketplace. The figures are taken from a study done on the implications of H.R. 3567 by Franklin Associates, submitted to the Subcommittee on Monopolies and Commercial Law. The study projected that by 1982, the returnable bottle will have disappeared from the marketplace unless the industry is permitted to retain its exclusive territorial rights. Our amendment would have added language to H.R. 3567 to further promote this objective.

According to this study, some of the adverse effects this disappearance of the returnable bottle will have on energy and the environment are as follows. Energy consumption can be expected to increase by the equivalent of—

First, electricity for a city of 100,000 people for 69 years;

Second, gas to heat 100,000 midwestern homes for 4.9 years;

Third, 129 million gallons of gasoline; and

Fourth, a coal train 686 miles long.

By the same token, consider the following environmental consequences should the returnable disappear:

First, air pollution will have increased by 37.6 percent;

Second, water pollution will have increased by 28.7 percent; and

Third, solid waste will have increased by 34.8 percent.

Mr. Speaker, I have listed numerous costs to be incurred should the returnable system disappear from the marketplace. And likewise, I have listed the sound public support for a returnable system. In this day of skyrocketing energy prices and dwindling supplies of natural resources, the savings afforded through a refundable system should be maximized to the greatest extent possible. Congress cannot responsibly grant the soft drink industry and antitrust exemption without a purpose. The benefits that would have been gained by requiring a certain percentage of beverages to be sold in returnable containers would have provided such a purpose. Consumers would have been guaranteed the freedom to choose which kind of beverage container they desired, and Americans as a whole would have been afforded a cleaner, more environmentally sound country in which to live.

I deeply regret that the full House was not given the chance to debate our amendment which was such a modest proposal.

Mr. McCLORY. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. BUTLER).

(Mr. BUTLER asked and was given permission to revise and extend his remarks.)

Mr. BUTLER. Mr. Speaker, I rise in support of H.R. 3567. While I am one of the many cosponsors of this legislation, it is my amendment in the nature of a substitute which you have the privilege of voting on today. In my opinion, my amendment in the nature of a substitute works four improvements into the bill.

When the Antitrust Subcommittee met on this legislation, several amendments were offered which were narrowly defeated—some by only 1 or 2 votes on the 12-man subcommittee. Thus while the bill was ultimately approved by the subcommittee, it was clear that there was appreciable dissatisfaction. Thereafter, for full committee consideration, I drafted a substitute incorporating what I considered the most desirable amendments discussed in subcommittee. The draft enjoyed broad support in the committee. It has satisfied many of the dissatisfied. And it caused a sufficient shift in the vote—no minor matter—that allows the bill to be brought up under suspension of the rules rather than the process of requesting a rule and waiting to squeeze into our very busy floor schedule.

The first change made by the substitute eliminates some Latin language—in pari materia—that might have had the effect of removing the soft drink industry from the purview of antitrust laws not yet written as well as from other laws not even dealing with antitrust. This result was something no one wanted; consequently, this change was readily accepted.

The second change made by the substitute was necessitated by adverse commentary the bill received during the subcommittee's hearings. It was suggested that the breadth of the bill's language would promote not only exclusive territories but also certain per se offenses as well. My substitute as originally drafted would have made clear that no per se offenses were authorized. But some supporters feared that some courts might follow the arguments of antitrust activists that exclusive territorial arrangements in the soft drink industry should themselves be held to be per se violations in spite of GTE-Sylvania. Thus lest the bill become circular by taking away in one section what it gave in another, we sought, during negotiations in full committee, to list the per se offenses we did not intend to authorize. And so it came to pass that the bill now expressly states that it does not authorize price fixing, horizontal restraints of trade, or group boycotts.

The third change made by the substitute eliminated a rather egregious mistake made in drafting the legislation. Since under current law the pendency of a government case like that of the FTC, which was filed in 1971, suspends the running of the 4-year statute of limitations, the industry was fearful that a private party might bring a lawsuit seeking damages from 1967 to the present, that is from a date 4 years before the FTC complaint was filed. The bill originally resolved this problem by providing that damages could not begin to run prior to the date the court had determined that there was a violation. Not only did this limit liability to a 4-year period in the circumstances of the FTC case, it precluded any victim from recovery unless he was the second victim. Since no victim would ever want to be first in line, the chances for recovery by a second victim would have been slight.

The effect of the original language thus was to hobble private antitrust actions permanently. I think it might have been a little embarrassing for the committee to have supported such a provision. My amendment spares such embarrassment by addressing the industry's proper concern—and no more. Private actions are salvaged and the industry's present potential 13-year liability is reduced to four in the event a successful case is brought against it.

The fourth change was likewise an improvement that produced a broad consensus in favor of the legislation. Of the four changes, this alone affects the proviso. Now the proviso is substantially the most important part of the bill because it establishes what a court must find to offset the absence of intrabrand competition in the licensing contracts. The bill says, in effect, that the absence of intrabrand competition is OK if there is substantial and effective interbrand competition presumably, as witnesses have suggested, as a result of such licensing contracts.

One must be careful in discussing the balancing test implied by this legislation because it is the heart and soul of this controversy. There is consequently all sorts of tugging and hauling from various quarters. At one extreme, there are those who would focus on the restraint of intrabrand competition. That is close to the FTC's thinking. At the other, there are those who would focus on the strength of interbrand competition. But that approach brings us very close to an exemption.

So while some might want to focus on the bad and call these territorial restraints per se antitrust violations and while others might want to focus only on the good and thus provide an exemption from the antitrust laws for the soft drink industry, the truth lies somewhere in between.

This bill establishes the rule of reason as the standards for judging competition in this industry. Therefore, this bill disdains both the per se approach and the exemption approach. A court must look at all the circumstances, both the good and the bad, in making its determination. It would have been downright silly to say that the courts cannot look at the

bad while we turned cartwheels in committee to make sure that victims could sue for treble damages and recover.

I can understand why people at both extremes would like to turn things their way as we move expeditiously to close this chapter. But that must not overcome a solid year of legislative history to the effect that the rule of reason—which requires a court to weigh the good against the bad—is what this bill codifies.

Now the problem with the proviso as originally drafted is that it provided an unfocused picture of the requisite interbrand competition needed to offset the intrabrand restraints. What concerned many of us was the suggestion that if a consumer could find 20 different nonalcoholic drinks, including bottled water, in the exclusive territory of his residence, the test was satisfied. My substitute provides the necessary focus. The interbrand competition that must exist to satisfy the test must be both in the relevant geographic market which may or may not be congruous with the exclusive territory as well as in the relevant product market which is a more limited market than the soft drink market generally. If a lawsuit involves Pepsi, then competition with colas would seem relevant. If it involves Sprite, then lemon-lime drinks would seem relevant. And so on.

By bringing the fuzzy proviso into sharper focus, the substitute makes clear that the proviso is a true requirement and not a fiction that the courts are intended to ignore as was the case with the proviso of the now repealed fair trade laws. The changes make clear that it is the rule of reason standard that is to govern and not only half of it.

Time and again during our hearings I and others asked witnesses on behalf of this legislation what was unreasonable about the rule of reason. Invariably they replied that nothing was unreasonable but that the FTC misapplied the law. I agree wholeheartedly on both counts.

The language before you today contains the four significant improvements I have outlined. These changes perfect and refine the purpose of this legislation. While we in subcommittee by no means sat as a court of law sifting through the evidence of the FTC case, it is my view that licensing agreements in the soft drink industry do, on balance, promote competition. For over 9 years the industry has sought no more than a fair chance to make their case under the rule of reason standard. The industry will now have that protection.

I urge an "aye" vote on the motion to suspend the rules.

□ 1320

Mr. McCORMACK. Mr. Speaker, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Washington.

Mr. McCORMACK. Mr. Speaker, I congratulate the gentleman from Virginia (Mr. BUTLER) and the gentleman from Texas (Mr. HALL). I rise in strong support of this bill. It is important; and it is necessary to help maintain order in an existing, practical system for soft drink distribution. I hope that the Members will support the bill.

Mr. McCLORY. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. FISH).

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Speaker, after nearly 9 years of uncertainty hovering over the conduct of business by the Nation's soft drink industry, we have today an opportunity to approve legislation, H.R. 3567 which will clarify the application of the antitrust laws to the soft drink industry, protecting both small businesses and the consumer.

We are asked what has happened to free enterprise? For the past 75 years, the soft drink industry has been operating under a system of exclusive territorial rights for bottlers of the same soft drink. The Supreme Court recently decided that exclusive territorial arrangements were not per se violations of the antitrust laws, but should be judged on the basis of the rule of reason. H.R. 3567 makes it clear that this is the standard under which courts should determine the legality of the territorial arrangements of the soft drink industry. The FTC was wrong.

A few weeks ago, the Senate passed S. 598 by a vote of 89 to 3. This bill was identical to H.R. 3567, but the House Judiciary Committee decided that several improvements were necessary. One change insures that the Government will prosecute any per se violations of the antitrust laws by the soft drink bottlers. Another change reinstates the 4-year antitrust statute of limitations for cases brought against bottlers.

I believe these improvements make H.R. 3567 an excellent product of the legislative system which will both strengthen the soft drink industry and benefit the consumer.

I urge strong support of H.R. 3567.

Mr. EDWARDS of California. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. LLOYD).

(Mr. LLOYD asked and was given permission to revise and extend his remarks.)

Mr. LLOYD. Basically, Mr. Speaker, the problem we are facing here is, we are going to vote on something that we have not had a chance to debate. That is the objection I have in this whole thing. I do not care where you come from. I know this bill as it stands is probably, in all fairness, a better bill than the one that was originally asked for in the discharged petition.

Mr. Speaker, the fact remains we do not have a chance to debate it. There is talk about what the bill would really do. It would provide an exemption for the soft drink bottlers to the antitrust law. I am not really sure we should not talk about that. It would establish only a single entry industry exemption for an unregulated industry and I am sure we ought to talk about that because we are setting a precedent. Why not other industries asking for the same precedent? Should they not also be exempted?

Mr. Speaker, the antitrust laws could then become a maze of special exemptions.

Mr. Speaker, there is currently a case pending on this in the U.S. Court of Appeals for the District of Columbia. What is wrong with the allowing the courts to go ahead and take a look at it? No one will be hurt by that.

Furthermore, Mr. Speaker, the bill does nothing to combat the rapid demise of small bottlers. I think they also should have a voice in this. The only real price competition intrabrand between bottlers would not be allowed under this bill. I would like to see a little competition out there. For those of us who stand for free enterprise, there is nothing wrong with allowing the marketplace to work its will. There is nothing going to destroy our system of government if we do that.

Mr. Speaker, consumers stand to gain when there is real competition in the marketplace. That is what this is all about. Let us go ahead and have a chat about this right here on this floor. Let us find out what we are really talking about, rather than rushing pell-mell into something we know nothing about. I think it is time for us to look at this. This is supposed to be a deliberative body. Let us exercise such deliberation and vote against this bill.

Mr. EDWARDS of California. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. PEASE).

(Mr. PEASE asked and was given permission to revise and extend his remarks.)

Mr. PEASE. Mr. Speaker, there are a number of substantive reasons why the bill before us should not pass. It is not a good bill legislatively. Mr. Speaker, I would like to object to the bill not on substantive grounds but on procedural grounds. The point has been made that the bill is up under suspension today. It is a highly controversial bill which ought to be subject to amendment and should not be under suspension. It would not be up under suspension today had there not been a discharge petition which discharged the committee of the original bill. I think that is even more objectionable and is a thing which we in the House need to worry about not only for this bill, but for future bills. If a special interest piece of legislation like this can get enough signatures to be discharged from the committee which has the responsibility for looking at it, then that to me is a dangerous, dangerous precedent.

Mr. Speaker, I ask you, because of the procedure if nothing else, to vote against the bill. If one is inclined to vote against the bill and one fears the defeat of this bill means the original bill could still come up under the discharge procedure, that is not correct. If this bill goes down, that is it. The original bill would not be subject to being brought up under the original discharge procedure. Again, on procedural grounds, I ask that the bill be defeated.

Therefore, Mr. Speaker, I do rise in strong opposition to H.R. 3567. I would like to counter some of the claims put forth in favor of this bill.

Proponents of the bill argue that the territorial restrictions are necessary in order to stimulate capital investment by bottlers, to promote delivery to low-volume customers, to encourage bottlers

to engage in local advertising, and to insure quality control. With regard to such contentions, the FTC ruled that either the restrictions would not have produced such benefits, that there were less restrictive alternatives for achieving the benefits, or that the benefits were inconsistent with the history and purpose of the Federal Trade Commission Act as well as the policies of competition and efficiency.

Another claim of supporters of this legislation is that the exclusive territorial practice is necessary to the survival of the returnable bottle, which costs at least a third less per ounce than the nonreturnable. This is probably true. However, the territorial system alone is not enough to guarantee the survival of the returnable bottle. This is evident from the fact that under this territorial system returnables dropped from 98 percent of the market in 1958 to 38 percent today.

A leading argument advanced in favor of H.R. 3567 is that this bill will protect small bottlers. There are three responses to this argument.

First, small bottlers are already protected by the Sherman and Robinson-Patman Acts from being driven out of business by unfair practices of larger bottlers, such as predatory pricing.

Second, it is difficult to imagine how the preservation of exclusive territorial franchises will benefit small bottlers since the trend under this arrangement has only been toward greater economic concentration. The number of bottlers in the soft drink industry has declined from over 6,000 in 1950 to 2,042 today, as small businesses have given way to very large bottling interests. Furthermore, although most of the bottlers are separate business entities from the syrup manufacturers, the parent companies are buying out the best and biggest markets. The parent companies are not concerned with the interests of the small bottlers.

Third, it should be pointed out that the protection of small business as such is neither the goal of antitrust laws nor wise economic policy. Protecting the competitive process and insuring maximum consumer welfare by promoting efficiency are the goals of the antitrust laws. Small business is protected to the extent that it can survive in a competitive marketplace, but not at the expense of efficiency.

Finally, advocates of this bill contend foremost that vertical territorial restrictions promote interbrand competition and the resulting benefit outweighs the harm done to intraband competition. On the contrary, the vertical territorial restrictions have contributed to reducing competition at the interbrand level in the soft drink industry. Coca-Cola and Pepsi alone now control 59.6 percent of the national market and the four largest syrup manufacturers hold 73.1 percent of the market. This is a tight oligopoly by most standards of industry analysis.

The primary effect of exclusive territory agreements is to protect the largest soft drink manufacturers from competition at the bottling level of production. It consequently encourages inefficiency. Due to the lack of competition among distributors, producers can charge higher prices, and in the end, consumers pay more. The monopoly overcharge attributed to the effects of the exclusive territory system in the soft drink industry was estimated by the FTC to be approximately one-quarter billion dollars annually. It is clear that H.R. 3567 is anticonsumer legislation designed to maintain the inflated pricing structure in the soft drink industry for the benefit of a few large corporations.

In addition Mr. Speaker, I would like to impress upon my colleagues what a serious mistake it is for the House to consider this controversial special interest legislation under such a hasty procedure and at this particular time. Recognition must also be given to the dangerous precedents that this bill would establish.

This bill would start a flood of demands for equal treatment from industries which have lost cases related to similar marketing arrangements, including the automobile, bicycle, mattress, and independent grocers industries. Enactment of this legislation at this time would interfere with the established process of judicial review of agency decisions before that process is completed. This would signal that every FTC antitrust action not to the liking of the industry involved is fair game for political reversal. To give such a signal would threaten FTC enforcement of the antitrust laws and their restraining effect on inflation.

I urge a "no" vote.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. PEASE. I will be happy to yield to the gentleman from Ohio.

Mr. SEIBERLING. I assume, however, the gentleman would not feel this procedure was as unpleasant to him as the discharge petition which is the alternative which would have faced the House had we not brought this bill to the floor.

Mr. PEASE. The gentleman is exactly right. I commend the committee for bringing the bill to the floor to avoid the discharge procedure. I wish it had been brought up under other than the suspension.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. PEASE. I do yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, I should point out that the Committee on the Judiciary did present a number of amendments which are in the bill, coming before us in the form the bill does now so that we have overcome those objections that there were at the time the discharge petition was filed.

Mr. EDWARDS of California. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. MAGUIRE).

Mr. MAGUIRE. Mr. Speaker, this is certainly an enormously complex issue which has been discussed for many years. There is dispute about whether small bottlers would be helped under the bill, or more helped without the bill, but the fact of the matter is that those who have studied this in great detail—the Department of Justice, the FTC, Alfred Kahn, the President's inflation fighter—have come out with a decision that this is not a helpful bill. Furthermore, the matter is in the courts. Why can we not allow the courts to make a decision without interfering with the judicial process?

Mr. Speaker, there is a question about this body itself. Does this body finally represent whatever powerful special interest group comes in and asks for special treatment? The gentleman from New York (Mr. WEISS) asked what happened to free enterprise? That is a good question. I would like to pose a second question: What happened to representing the people? Do we do that in any more than a technical sense, here, any more? Surely this bill because of its complexity and the very fundamental issues involved deserves debate by this House. We cannot get it in 20 minutes on each side of the issue. Let us vote "no" so that we can thoroughly discuss this bill.

Mr. McCLORY. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. SAWYER).

(Mr. SAWYER asked and was given permission to revise and extend his remarks.)

Mr. SAWYER. Mr. Speaker, I rise in support of this legislation and particularly to compliment the gentleman from Texas (Mr. HALL) who worked long and hard in the process of pursuing discharge to get this bill to the floor.

Mr. Speaker, I may say there is talk about violating the antitrust laws and I feel that to be a little out in left field. Coca-Cola has a nationwide monopoly to sell Coca-Cola. No one else can move under that brand name and it is not logical to say Coca-Cola does not have a right to subdivide their right, which is all we refer to. We are not talking about the right to market a cola or a particular kind of soft drink, but Coca-Cola. There is no other company in the country that can do that. Given the right to do that, why is there anything obnoxious about their subdividing territorially, that right to exercise their overall right.

Mr. Speaker, I yield back the balance of my time.

□1330

The SPEAKER pro tempore (Mr. RUSSO). The Chair recognizes the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, the gentleman from Michigan is right. Coca-Cola could legally have decided to distribute all of its product by itself, and there would therefore have been no intrabrand competition. They have chosen instead to franchise it out to various small businesses in many places, and the same is true of a number of other syrup manufacturers.

No one has more of a record of supporting the antitrust laws here than I do, and I would not support this legislation if I felt it was an exemption from the antitrust laws. It is not an exemption. It does not grant antitrust immunity. It will apply only in situations where there is substantial and effective competition among soft drink suppliers and bottlers in the relevant product and geographic markets.

Therefore, I strongly urge that it be

supported by the House, because it is far preferable to the bill the committee originally took up.

I want to commend the gentleman from Texas (Mr. HALL) for having worked out this compromise, which avoids an exemption from the antitrust laws.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, we are both pretty tough in supporting the antitrust laws, and I want to joint the gentleman in his statement and commend him for his leadership on this legislation. Likewise, I would like to commend the gentleman from Texas (Mr. HALL) and the gentleman from Virginia (Mr. BUTLER), whose amendment in the nature of a substitute has produced such overwhelming support for this legislation.

● Mr. DASCHLE. Mr. Speaker, I am pleased that I have been able to support and now vote in favor of passage of H.R. 3567, the Soft Drink Interbrand Competition Act.

As my colleagues are well aware, this bill will clarify the circumstances under which exclusive territorial licenses would be allowed for the soft drink industry. Presently, the soft drink industry has functioned well under territorial agreements for the past 75 years. These agreements have guaranteed the survival and continuation of the small, independent soft drink bottler in an increasingly competitive industry.

Recently, however, the FTC has ruled that these territorial provisions constitute unfair methods of competition and has pressed to have such agreements banned under antitrust laws. Along with over 300 of my colleagues, however, I disagree with this assertion. This is why this legislation is necessary to protect the 2,150 independently owned soft drink bottlers across the country.

I would like to point out that 70 percent of the independently owned bottlers have less than 50 employees. Thus, they are potentially very vulnerable in an increasingly competitive industry.

In conclusion, I feel that this bill provides adequate safeguards to protect these people's livelihoods, yet does not pose an infringement of our antitrust laws nor hinder free market competition. For these reasons I support this legislation and thank Mr. HALL for his efforts on behalf of the soft drink bottlers around the country.●

● Mr. OTTINGER. Mr. Speaker, I rise in support of H.R. 3567, the Soft Drink Interbrand Competition Act.

It has been years since the Federal Government initiated action challenging the territorial provisions contained in bottlers' trademark licenses. As a result the industry is plagued by uncertainty. Many bottlers are torn between conflicting contractual obligations and threats by major chain store customers. Problems facing the soft drink industry, therefore, must be addressed immediately by congressional action. Countless bottlers are being driven out of business as the judicial process is exhausted. Indeed, failure to act on this legislation could jeopardize an industry which in New York State alone employs over 6,000 people and generates over $1.2 billion in annual sales.

Standards under which the bottlers operate must be clarified. Previous rulings fail to fairly assess the unique characteristics of the soft drink industry. The proposed bill would take into account all aspects of competition applicable to the industry and thereby accomplish antitrust objectives.

H.R. 3567 establishes a standard whereby soft drink products shall not be held in violation of antitrust law if the soft drink products subject to such an arrangement are in "substantial and effective competition" with rival products. The words "substantial and effective" allow for flexibility as well as establish a standard by which the competitiveness of the industry can be judged. Factors to be taken into consideration include evidence of the intensity of price competition; responsiveness of output levels to consumer demand; and the quantity and quality of bottlers' competing products. Under such a criterion the industry will be tested and it will be expected to live up to competitive standards.

Evidence indicates that there is competition amongst bottlers and the arrangements used by the industry promote such competition. I believe this measure is an effective way to enhance that competition and insure the future viability of the countless small businesses involved in the industry. I urge my colleagues to join me in supporting this legislation.●

● Mr. WEAVER. Mr. Speaker, I rise in strong support of H.R. 3567, the Soft Drink Interbrand Competition Act of 1980. This much needed legislation will clarify and protect the legal status of over 2,150 independently owned bottlers which bottle soft drinks under trademark licensing agreements with national franchise companies such as Coca-Cola. There are over 30 of these bottlers in my State of Oregon, and many of them have written to me in support of the bill.

The antitrust complaint lodged against these companies by the FTC over 9 years ago was directed at the territorial provisions of trademark licensing. While this point may be pertinent in reference to other industries, it just does not address the reality of the soft drink marketing system, as the FTC's own administrative law judge found in his original decision. He said that the provisions for exclusive territory among bottlers actually increased interbrand competition in the industry, and helped insure the survival of small independent bottlers which serve both large and minor accounts in their communities. Without exclusive territorial rights, these small bottlers could be forced out of business by the largest bottlers in each region.

However, the FTC Commissioners overturned the original decision, thus making this clarifying legislation necessary. If the FTC ruling is allowed to stand, the soft drink industry will be disrupted, and the interests of consumers and thousands of small businessmen and their employees will be irretrievably damaged. There is no intent here to open a loophole in antitrust law. Antitrust statutes are designed to foster competition, not to subvert it. And it is clear that these territorial agreements protect the small bottler by guaranteeing the right to manufacture, distribute, and sell soft drinks within a service area. By protecting these small businessmen, the agreements also protect small retailers, who could not expect to get the same efficient, "store-door" service from larger corporate bottlers.

Mr. Speaker, this is a classic example of an all-too-common situation where hard-working small businessmen and women find their economic security threatened by reckless, bureaucratic actions that display little sensitivity or concern for the impact their regulatory zeal may have. It is a situation worsened by the efforts of those who oppose the interests of the small bottlers, who wish to dominate the markets themselves.

Mr. Speaker, it is the obligation of every Member of this House to work to protect small business in our society. We see too much control of business and industry by a small number of ever-expanding corporate giants. For the health of our economy we must promote small business' ability to compete effectively with the giants.

There is no question of the need for this legislation, Mr. Speaker, and I urge the House to pass it expeditiously.●

● Mr. BIAGGI. Mr. Speaker, I rise in support of H.R. 3567. I am a cosponsor of the bill and one of 218 Members who signed the discharge petition which aided greatly in the expeditious consideration which this legislation is receiving from the House.

H.R. 3567 simply proposes to prevent the decimation of a bona fide industry from the effects of an ill-advised ruling by the Federal Trade Commissioners. The Commissioners in 1978 ruled that the territorial arrangements used by the soft drink industry for the past 75 years constituted unreasonable restraints of trade. This ruling was preceded by 7 long years of court battles and the final action taken by the Commissioners overruled the decisions of every lower court which had reviewed the arrangements.

In my home State of New York, the soft drink industry is responsible for the employment of some 5,800 workers in a total of 116 plants. It is a major industry in a State which needs strong industry for its economic well-being. The present territorial arrangements practiced by the soft drink industry work to the advantage of the small businessman and also the consumer. Indications I have received from industry representatives show that if the FTC ruling were to stand the smaller bottler would be forced out of business or would be forced to become distribution arms for large bottlers. This would result in greater concentration and less competition in the industry and this could lead to both higher prices and in some areas reduced supplies.

Using the present territorial arrangements, the overwhelming majority of soft drink bottlers are independently owned and 70 percent employ fewer than 50 people. From the consumer end, the

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price of cola in 1939 was 0.77 cents of 1 cent per ounce, today its costs 0.79 cents of 1 cent per ounce. Further variety of soft drink products is quite extensive with new products entering the market on a regular basis.

When there is nothing wrong with a system why feel compelled to fix it. That is the question we must ask ourselves today. This Congress has gone on record on several occasions this year against arbitrary actions taken by the FTC under the guise of consumer protection. Their assault on the soft drink industry is wrong and this legislation must be passed before any further harm is done.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. SEIBERLING) that the House suspend the rules and pass the bill, H.R. 3567, as amended.

The question was taken.

Mr. EDWARDS of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

SOFT DRINK INTERBRAND COMPETITION ACT

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 3567, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. SEIBERLING) that the House suspend the rules and pass the bill, H.R. 3567, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 377, nays 34, not voting 22, as follows:

[Roll No. 360]

YEAS—377

Adbnor	Brooks	Dornan
Addabbo	Broomfield	Dougherty
Akaka	Brown, Calif.	Duncan, Oreg.
Albosta	Broyhill	Duncan, Tenn.
Alexander	Buchanan	Edgar
Ambro	Burgener	Edwards, Ala.
Anderson, Calif.	Burlison	Edwards, Okla.
Andrews, N.C.	Burton, John	Emery
Andrews, N. Dak.	Butler	English
Annunzio	Byron	Erdahl
Anthony	Campbell	Evans, Del.
Applegate	Carney	Evans, Ga.
Ashbrook	Carr	Evans, Ind.
Ashley	Carter	Fary
Aspin	Chappell	Fazio
Atkinson	Cheney	Fenwick
AuCoin	Chisholm	Ferraro
Badham	Clausen	Findley
Bafalis	Clay	Fish
Bailey	Cleveland	Fisher
Baldus	Clinger	Fithian
Barnard	Coelho	Flippo
Barnes	Coleman	Florio
Bauman	Collins, Tex.	Foley
Beard, R.I.	Conable	Ford, Mich.
Beard, Tenn.	Conte	Forsythe
Bedell	Corman	Fountain
Benjamin	Cotter	Fowler
Bennett	Coughlin	Frenzel
Bereuter	Courter	Frost
Bethune	Crane, Daniel	Fuqua
Bevill	Crane, Philip	Garcia
Biaggi	D'Amours	Gaydos
Blanchard	Daniel, Dan	Gephardt
Boggs	Daniel, R. W.	Giaimo
Boland	Danielson	Gibbons
Boiling	Dannemeyer	Gilman
Boner	Daschle	Gingrich
Bonior	Davis, Mich.	Ginn
Bonker	Davis, S.C.	Glickman
Bouquard	de la Garza	Goldwater
Bowen	Deckard	Gonzalez
Brademas	Devine	Goodling
Breaux	Dickinson	Gore
Brinkley	Dicks	Gradison
Brodhead	Dingell	Gramm
Brown, Ohio	Dixon	Grassley
Broyhill	Donnelly	Gray
Grisham	McCloskey	Royer
Guarini	McCormack	Rudd
Gudger	McDade	Russo
Guyer	McDonald	Sabo
Hagedorn	McEwen	Santini
Hall, Ohio	McHugh	Satterfield
Hall, Tex.	McKay	Sawyer
Hamilton	McKinney	Schroeder
Hammer-schmidt	Marks	Schulze
Hance	Marlenee	Sebelius
Hanley	Marriott	Seiberling
Hansen	Martin	Sensenbrenner
Harkin	Mathis	Sharp
Harris	Matsui	Shelby
Harsha	Mattox	Shumway
Hawkins	Mavroules	Shuster
Heckler	Mazzoli	Simon
Hefner	Mica	Skelton
Heftel	Michel	Smith, Iowa
Hightower	Mikulski	Smith, Nebr.
Hillis	Miller, Calif.	Snowe
Hinson	Miller, Ohio	Snyder
Holland	Mineta	Solomon
Hollenbeck	Minish	Spellman
Holt	Mitchell, N.Y.	Spence
Holtzman	Moakley	St Germain
Hopkins	Mollohan	Stack
Horton	Montgomery	Staggers
Howard	Moore	Stangeland
Hubbard	Moorhead, Calif.	Stanton
Huckaby	Moorhead, Pa.	Steed
Hughes	Murphy, Ill.	Stenholm
Hutchinson	Murphy, Pa.	Stewart
Hutto	Murtha	Stockman
Hyde	Musto	Stokes
Ichord	Myers, Ind.	Stratton
Ireland	Myers, Pa.	Studds
Jacobs	Natcher	Stump
Jeffries	Neal	Swift
Jenkins	Nedzi	Symms
Johnson, Calif.	Nelson	Synar
Johnson, Colo.	Nichols	Tauke
Jones, N.C.	Nolan	Taylor
Jones, Okla.	Nowak	Thomas
Jones, Tenn.	O'Brien	Thompson
Kastenmeier	Oberstar	Traxler
Kazen	Obey	Trible
Kelly	Ottinger	Ullman
Kemp	Panetta	Van Deerlin
Kildee	Pashayan	Vander Jagt
Kindness	Patten	Vanik
Kogovsek	Patterson	Vento
Kostmayer	Paul	Volkmer
Kramer	Perkins	Walgren
LaFalce	Petri	Walker
Lagomarsino	Peyser	Wampler
Latta	Pickle	Watkins
Leach, Iowa	Porter	Waxman
Leach, La.	Preyer	Weaver
Leath, Tex.	Price	White
Lederer	Pritchard	Whitehurst
Lee	Pursell	Whitley
Lehman	Quayle	Whittaker
Leland	Quillen	Whitten
Lent	Railsback	Williams, Mont.
Levitas	Rangel	Williams, Ohio
Lewis	Regula	Wilson, Bob
Livingston	Rhodes	Wilson, Tex.
Loeffler	Rinaldo	Winn
Long, La.	Ritter	Wirth
Long, Md.	Roberts	Wright
Lott	Robinson	Wyatt
Lowry	Rodino	Wylie
Lujan	Roe	Yatron
Luken	Rose	Young, Alaska
Lundine	Rostenkowski	Young, Fla.
Lungren	Roth	Young, Mo.
McClory	Rousselot	Zablocki
		Zeferetti

NAYS—34

Bellenson	Jeffords	Rosenthal
Bingham	Lloyd	Roybal
Burton, Phillip	Maguire	Scheuer
Cavanaugh	Markey	Shannon
Conyers	Mitchell, Md.	Solarz
Dellums	Moffett	Stark
Derwinski	Motti	Weiss
Drinan	Oakar	Wolpe
Early	Pease	Wydler
Eckhardt	Ratchford	Yates
Edwards, Calif.	Reuss	
Green	Richmond	

NOT VOTING—22

Anderson, Ill.	Erlenborn	Rahall
Archer	Ertel	Runnels
Brown, Ohio	Fascell	Tauzin
Collins, Ill.	Ford, Tenn.	Udall
Corcoran	Jenrette	Wilson, C. H.
Derrick	Madigan	Wolff
Dodd	Murphy, N.Y.	
Downey	Pepper	

□ 1400

The Clerk announced the following pairs:

Mr. Fascell with Mr. Erlenborn.
Mr. Jenrette with Mr. Runnels.
Mr. Murphy of New York with Mr. Tauzin.
Mr. Pepper with Mr. Ertel.
Mr. Charles H. Wilson of California with Mr. Madigan.
Mr. Wolff with Mr. Anderson of Illinois.
Mrs. Collins of Illinois with Mr. Archer.
Mr. Derrick with Mr. Brown of Ohio.
Mr. Dodd with Mr. Corcoran.
Mr. Downey with Mr. Ford of Tennessee.
Mr. Udall with Mr. Rahall.

Mr. MINISH changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 598) to clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 598

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Soft Drink Interbrand Competition Act".

SEC. 2. Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: *Provided*, That such product is in substantial and effective competition with other products of the same general class.

SEC. 3. The existence or enforcement of territorial provisions in a trademark licensing agreement for the manufacture, distribution, and sale of a trademarked soft drink product prior to any final determination that such provisions are unlawful shall not be the basis for recovery under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

SEC. 4. As used in this Act, the term "antitrust law" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (the Sherman Act), approved July 2, 1890, the Federal Trade Commission Act, approved Septem-

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ber 26, 1914, and the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), approved October 15, 1914, and all amendments to such Acts and any other Acts in pari materia.

MOTION OFFERED BY MR. SEIBERLING

Mr. SEIBERLING. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. SEIBERLING moves to strike out all after the enacting clause of the Senate bill (S. 598) and insert in lieu thereof the provisions of H.R. 3567, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill, H.R. 3567, was laid on the table.