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ACTION Introduced by Mr. Peyser

STATEMENT OF THE HONORABLE PETER PEYSER UPON THE INTRODUCTION OF THE SOFT DRINK INTERBRAND COMPETITION ACT

(Mr. PEYSER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

● Mr. PEYSER. Mr. Speaker, today I am introducing the Soft Drink Interbrand Competition Act to allow soft drink companies to continue the practice of designating exclusive territory to their bottling companies, a practice that prohibits the bottler from selling outside a specified geographical area.

The Federal Trade Commission has alleged under the guise of consumerism that this territorial restriction impairs competition.

The fact is that if the FTC gets its way the big bottlers will drive out the little bottlers and distribution to small stores and vending machines will be reduced because of the small profits these small sellers generate.

And what would be the impact of bottling plant closings?

In New York State, for instance, 116 bottling plants in 61 cities employ 5,737 persons with an aggregate payroll of $79 million. A majority of the plants are small, employing less than 50 persons. The industry bought products and services from other firms totaling $712.7 million in 1977 and paid an estimated $16.3 million in State and local taxes.

Nationwide, soft drink manufacturers' sales in the United States in 1977 were estimated at $11,526.8 million. The industry employed 114,347 persons with a payroll of $1,267.2 million. Of the 2,174 soft drink plants in the Nation, 1,500 are owned by small businesses employing less than 50 persons. Soft drink manufacturers purchased goods and services from other firms valued at $6,959 million and paid State and local taxes of $184.8 million in 1977.

The franchise system takes into account the enormous size of the United States and its unequally distributed populations. If big customers bought from big distributors, there would be little incentive to serve the retailer who sells a few cases a week.

As far as I am concerned, this is the last straw—the FTC has overextended its authority on this issue. In fact, the Commission overruled the findings of its own administrative law judge who ruled that not only is the franchise system lawful, but also possibly fosters competition. The judge made extensive findings to the effect that there is intensive interbrand competition in this industry in terms of price, product innovation and marketing technique.

The Soft Drink Interbrand Competition Act is intended to remedy fundamental defects in the conduct of the FTC proceedings by requiring that the lawfulness of soft drink bottler territories be tested with reference to the extent of competition between rival products and vendors. Specifically, the bill provides that exclusive territorial licenses to manufacture, distribute and sell trademarked soft drink products shall not be deemed unlawful as long as there is "substantial and effective competition" among different products. "Substantial and effective competition" is a flexible concept, but it would encompass such factors as: The number of brands, types, and flavors of competing products available in the licensee's territory; the number and strength of sellers of competing products; evidence of the intensity of price competition; persistence of excessive profit levels; the degree of service competition among vendors; ease of entry into the market; and failure to introduce more efficient methods of processes.

Territorial provisions have been utilized in the soft drink industry for more than 75 years with the understanding that they were legally permissible. The industry had abundant reason to believe in their legality since they were upheld by Federal courts as early as 1920 and on several recent occasions.

It is time for Congress to check this overzealous application of authority by the FTC. I urge swift enactment of the Soft Drink Interbrand Competition Act.●