THE BEER BILL

An Assessment of the
"Malt Beverage Interbrand Competition Act"

S. 412, H.R. 1108, and H.R. 3793

The Food Marketing Institute
1750 K Street, N.W.
Washington, D.C.

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The Food Marketing Institute (FMI) is a non-profit association that conducts programs in research, education and public affairs on behalf of its 1500 members -- food retailers and wholesalers and their customers. FMI's member companies operate more than 17,000 retail food stores with a combined annual sales volume of $140 billion -- half of all grocery sales in the United States. More than three-fourths of the FMI's membership is composed of independent supermarket operators or small regional firms.

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Beer Distributing Different From Soft Drinks

Journal and Courier
Lafayette, IN
February 13, 1985

It is true that Coke, Pepsi and Seven-Up have exclusive territories.. ..[R]retailers can go outside these territories and bring in Coke, Pepsi, or Seven-Up at a cost savings of over $2 per case; but retailers are not permitted to haul beer under current law....The people of Indiana should not be required to support distributors in exclusive territories that are inefficient and poorly managed.

Howard D. Hensley
President, Bar Barry
Liquors, Inc.

News-Sentinel
Fort Wayne, IN
January 22, 1985

INTRODUCTION

"We are unaware of any evidence or principled argument that might justify the [beer] bill, and we believe that enactment of such unjustified special exemptions has the detrimental effect of undercutting the ability of antitrust enforcement to preserve this Nation's free market economy."

Federal Trade Commission
Testimony on the Malt Beverage
Interbrand Competition Act
Senate Judiciary Committee
November 7, 1983

The 99th Congress is the third being asked to deal with the "Malt beverage Interbrand Competition Act," or what is now commonly called the beer bill. Versions introduced in the 97th and 98th Congresses were identical to S. 412, introduced by Senator Barry Goldwater (R-AZ) on February 6, 1985, and H.R. 1108, by Congressman Jack Brooks, (D-TX) on February 19, 1985. Congressman Brooks introduced another Malt Beverage Interbrand Competition Act, H.R. 3793, on November 20, 1985. It is a slightly different version, but the intent and potential impact of the bill are the same as S. 412 and H.R. 1108.

The purpose of the Act is to grant a special exemption from the antitrust laws to the beer wholesaling industry. This exemption from the antitrust laws that are applicable to other businesses would effectively place exclusive distribution agreements between brewers and their wholesalers beyond antitrust challenge. A beer distributor with such an agreement would have the exclusive sales rights for a particular brand in that territory -- retailers in the territory would be required to buy that brand only from that wholesaler. And, the wholesaler would not be

subject to the same antitrust laws applicable to other businesses.

Senate Judiciary Committee hearings on S. 412 were held on May 14 and October 2, 1985, and it was ordered reported favorably on October 31, 1985. Since it was first introduced in the 97th Congress it has never progressed this far.*

A wealth of testimony and information has been compiled over the years which shows, not surprisingly, that enacting the beer bill would:

- be anti-competitive
- increase prices to consumers
- grant a privileged antitrust exemption
- encourage other industries to seek special antitrust treatment
- eliminate the retailer's choice of suppliers
- hurt small business, and
- infringe on states' rights

This report summarizes arguments against the bill, shows the controversy surrounding the issue, and shows the broad opposition to the "Malt Beverage Interbrand Competition Act." The beer bill is a prime example of special interest legislation that is anti-consumer and anti-free enterprise.

* Hearings had been held in the 97th and 98th Congresses but no further favorable action had been taken by either House or Senate Judiciary Committees in those Congresses. Senator Dennis DeConcini (D-AZ) attempted to attach the beer bill to the Continuing Resolution in the closing days of the 98th Congress. He lost on a germaneness vote of 67 to 28, the second worst defeat of all attempts made to attach a rider to the Continuing Resolution.

OPPOSITION TO THE BEER BILL

In addition to consumers, small business, the American Bar Association and the Department of Justice, a number of groups interested in sound public policy have taken a position in opposition to the beer bill. They are as follows:

Consumer Federation of America

Congress Watch

Consumers Union

National Consumers League

Community Nutrition Institute

National Association of Attorneys General

Federal Trade Commission

Department of Justice

Alliance For a Competitive Market Place

New York City Consumer Affairs Office

National Hispanic Business Group

National Association of Retail Druggists

American Bar Association

District of Columbia Bar Antitrust, Trade Regulation and Consumer Affairs Division

National Small Business Association

American Retail Federation

National Licensed Beverage Association

Food Marketing Institute

National Grocers Association

National Association of Chain Drug Stores

National Association of Convenience Stores

Indiana Malt Beverage Association

Independent Beverage Distributors Alliance

Bonded Store Dealers of America

Empire State Beer Distributors Association

Office of Special Adviser to the President for Consumer Affairs

Metropolitan Spanish Grocers Association

Many State and Local Grocery and Retail Associations

EXCLUSIVE TERRITORIES -- HIGHER PRICES

Price competition at the wholesale level for a particular brand (intrabrand) is as important as price competition at the retail level. Retailers "shop" among wholesalers for the best price they can get just as consumers will go to a different store for a better price on a particular brand. With exclusive territories a wholesaler cannot sell his brand (or brands) outside his territory. A retailer wishing to stock a particular brand must buy that brand from the area's franchised wholesaler. An exclusive territory for a beer wholesaler thus becomes an exclusive monopoly territory.

The average supermarket carries about 14,000 items. Except for soft-drinks (and beer), all these products can be bought from competing wholesalers, or directly from the manufacturer. The cost of each item is reflected in retail prices.

Consumer Opposition

Testifying before the Senate Judiciary Committee on May 22, 1984, Jay Angoff of Public Citizen's Congress Watch stated "enacting the beer bill would compound the mistake made in 1980 of enacting the soft-drink bill, and would invite other industries to come to Congress seeking an anti-trust exemption. More important, economic theory, empirical evidence and common sense all demonstrate that enacting the beer bill would raise the price of beer."

Also testifying at the May 22, 1984 hearing was David Greenberg,

Legislative Director of the Consumer Federation of America. He said, "If enacted, the Malt Beverage Interbrand Competition Act would raise prices, reduce competition, and undermine the equal application of antitrust law which helps form the foundation of free and effective markets in this country."

A May 23, 1984 letter signed by Mark Silbergeld, Director of the Washington Office of Consumers Union, states, "In the beer industry, exclusive territories mean higher beer prices."

The New York Experience

Price monitoring by the New York City Department of Consumer Affairs showed that between January and October 1983 the price of Miller and Anheuser-Busch products increased 30 percent. While New York's mandatory deposit law went into effect during this period, soft drink prices went up only 4 percent. The big beer price increase has been attributed to new exclusive territory contracts for Miller and Anheuser Busch distributors.

In 1976 New York beer wholesalers tried to get the state legislature to enact an exclusive territory law. One document in opposition stated:

> "If enacted, this bill would grant territorial monopolies for the sale of beer to present beer wholesalers....The real objective of this bill and of franchise protection laws in general is special interest favoritism, granting wholesalers a perpetual hold on the distribution of products and foreclosing by legislation any competition....The absence of competition would inevitably precipitate a price rise."

Who said this? The firm Bond, Schoeneck and King on behalf of the Miller Brewing Company in a statement dated March 22, 1976.

Another statement in opposition to the proposed New York beer bill said:

> "This bill would restrict the beer wholesale business to approximately 160-180 N.Y.S. Class C. licenses, while granting territorial monopolies to these businesses....160-180 "primary distributors" may become complacent in dealing with "out of the way" or "small purchase" retailers. The bill is not in the best interest either of the "large purchase" retailer who sells at minimum markup, for he becomes subject to purchasing from the monopolistic beer wholesaler. In turn, the consumer market, under the absence of brand purchasing competition, inevitably rises."

Who said this? The United States Brewers Association in a statement dated May 3, 1976.

What has happened since 1976 is illuminating. Today, just <u>two</u> Miller wholesalers and <u>six</u> Anheuser-Busch wholesalers control the five boroughs of New York City, all of Long Island and Westchester County.

<u>The Indiana Experience</u>

In the past Indiana required exclusive territories, but today they are prohibited. In the early 1970s, competition took the form of "retail hauling" or "dock sales," which meant a wholesaler would sell to any retailer (i.e., <u>even those outside his territory</u>) who came to the wholesaler and picked up the shipment himself. This led to wholesalers <u>delivering</u> outside their territories.

As a result of competition, wholesale and retail beer prices declined approximately 20 percent in Indiana in the mid 1970s. In 1979 the Indiana Alcoholic Beverage Commission adopted Rule 28 which, by regulation, prohibits exclusive beer territories. Therefore, Rule 28 ratified what Indiana's marketplace had been doing for five years or more.

An economist testifying for the beer bill has said that Rule 28 had no effect on the price of beer. The inference, a misleading one, is that competition had no effect on price, when indeed, the price reduction had already taken place. Rule 28 merely confirmed the right of beer wholesalers to be competitive.

In 1981 the Indiana legislature created the Alcoholic Beverage Commission Study Committee. On September 16, 1981 the Beer Distribution Subcommittee, in a report to the full committee, reported that:

> "The effect of retail hauling on the price of beer was a reduction of approximately 20% on the wholesale and retail price. Thus one began to see discounting both with beer and hard liquor at the retail level. The reaction of wholesalers whose markets were now being "invaded" by lower priced beer took three forms: 1) legislation, 2) litigation, and 3) business practices."

Dr. Bruce Jaffee, Professor of Business Economics and Public Policy at Indiana University, has done independent research showing price differentials averaging 8-10 percent, when competition among beer wholesalers was opened up in Indiana. In some instances the price variation was greater than 20 percent.

In November 1982 the Indianapolis Star compared beer prices in areas of competition versus areas of monopolies in Indiana and found an average price difference of 19.8 percent.

Since 1974 the Indiana beer wholesalers who do not want to compete have tried in ten legislative sessions to have a law passed allowing exclusive territories. So far they have not been successful. On February 14, 1985 the Indiana House defeated the latest "beer baron bill" 54-41.

Indiana's Attorney General Linley E. Pearson testified against the beer bill before the House Judiciary Committee on November 3, 1983. He stated "As a matter of federal antitrust policy, I oppose any enactment of legislation purporting to "solve" an industry's particular problem, especially in an industry the regulation of which is constitutionally delegated to the states....Uncertainty as to federal law affects the climate in which the states must exercise their Twenty-first Amendment powers, and can only cause problems for the states."

Indiana newspaper quotations indicative of how the issue of exclusive beer territories can become a public concern are cited in the section entitled "Indiana's Debate on Exclusive Territories."

The question must be asked, therefore, why pass a Federal statute that will infringe on a state's authority over the marketing of alcoholic beverages? Before such action is taken it is incumbent upon the industry seeking a special exemption from antitrust statutes to demonstrate that the granting of the exemption will not be anti-competitive and will not impose higher prices on consumers. Evidence clearly shows the beer bill fails to meet that test.

BEER MARKETING: THE CURRENT SYSTEM

Twenty-seven states require exclusive beer territories, 22 are silent or neutral on the issue, and one, Indiana, prohibits them.

The first section of the Twenty-first Amendment to the Constitution

(ratified in 1933) repealed prohibition. The second section reserved for the states the complete authority to regulate the distribution and sale of alcoholic beverages. Therefore, it is for each individual state to decide for itself whether or not exclusive territories are the preferred system for distributing beer. No Federal legislation is needed.

The Three-tier System

Every state requires a three-tier system for the distribution of beer. That is, the brewer, the wholesaler and the retailer must remain three distinct and separate entities in the beer marketing system. The brewer and the retailer may not deal directly with one another. The brewer has to sell his product to a wholesaler and a retailer can only buy beer from a wholesaler.

Proponents claim that the three-tier system is being threatened and that the beer bill is needed to preserve it.

There is no threat whatsoever to the three-tier system. There has been no challenge, no move, in any state to do away with it. It would be a violation of law not to abide by the three-tier system. This argument is pointless because it would obviously take the willingness of a brewer to sell to a retailer in order to violate the three-tier system. Brewers and wholesalers both support the beer bill and both want the three-tier system.

The three-tier system, in fact, is unique to the alcoholic beverage industry. For other products, goods do not necessarily pass through a wholesaler. Manufacturers and retailers can, and do, deal directly in

large volume, and wholesalers in these circumstances are faced with competition from their own suppliers. The three-tier system protects beer wholesalers from this normal kind of competition.

The three-tier system gives beer wholesalers vertical protection from competition. With the beer bill they are seeking horizontal protection from each other. This is an extraordinary position! Other wholesalers have both vertical and horizontal competition, do very well, and are not seeking protection.

Because of the three-tier system, beer wholesalers have a guaranteed place in the market. Other factors that limit competition, such as licensing requirements, even further protect beer wholesalers from competition. More insulation and exclusion from antitrust statutes is not needed nor is it in the public interest.

Beer wholesalers, therefore, are hardly being threatened. Quite to the contrary, they enjoy many protections and competitive advantages the wholesalers of other products do not have.

The Beer Bill Infringes on States' Rights

Presently, the application of the antitrust laws to beer distribution does not intrude on states' rights under the Twenty-first Amendment. However, the attempt by the beer industry to get the federal government involved in an area traditionally left to the states will do so. If the beer bill becomes law, the federal government will be sending a clear message to the states, to the industry and to consumers. The result will be exclusive territories uniformly across the nation to the consumer's detriment, whether or not the state has approved, required or enforced

that distribution system.

Proponents of this bill are not defenders of states' rights. They want to insure the use of exclusive territories whether or not there is a state position on the question of exclusive territories. Because enactment of the beer bill will immunize these arrangements under the antitrust laws, exclusive territories undoubtedly will become the rule unless a state specifically prohibits them. Thus, this legislation will result in exclusive territories becoming the rule if a state does nothing one way or the other on this question. This will directly affect those 22 states whose laws are either silent or neutral on exclusive territories for the distribution of beer.

State Positions on Exclusive Territories

I. State law is either silent or neutral regarding exclusive territories:

Alaska	Idaho	New York
Arizona	Iowa	Oklahoma
California	Louisiana	Rhode Island
Colorado	Massachusetts	South Dakota
Connecticut	Mississippi	Washington
Delaware	Nevada	Wisconsin
Florida	New Jersey	
Hawaii	New Mexico	

II. State regulation prohibits exclusive territories:

Indiana

III. State law mandates exclusive territories:

Alabama	Minnesota	Pennsylvania
Arkansas	Missouri	South Carolina
Georgia	Montana	Tennessee
Illinois	Nebraska	Texas
Kansas	New Hampshire	Utah
Kentucky	North Carolina	Vermont
Maine	North Dakota	Virginia
Maryland	Ohio	West Virginia
Michigan	Oregon	Wyoming

COMPETITION -- BEER WHOLESALING

Intrabrand Competition

Is the beer industry really highly competitive? Proponents of the beer bill want to ignore the fact that intrabrand (same-brand) competition is an important part of the marketplace. They would have us believe everything is fine with only interbrand competition. To see if this is true, let us examine the automobile industry as an example. Assume a consumer wanted to buy a Chevrolet, but only one Chevrolet dealer was allowed in the territory by the manufacturer, and the customer could purchase only from that dealer. Even though the consumer may choose other makes of cars, the lack of intrabrand competition from other Chevrolet dealers would invariably mean a higher price tag. It is exactly the same situation that the beer industry is asking Congress to endorse with this legislation.

Comparing beer to other businesses shows that the beer industry already is one of the least competitive. The beer industry enjoys the lessened competition resulting from many state laws. While these restrictions serve social ends, they make the marketplace less competitive than for other products. (See the discussion on the three-tier system for another aspect of how the beer industry is not as competitive as other industries.)

The Department of Justice stated on November 7, 1983 before the Senate Judiciary Committee "In recent years, Congress has increasingly narrowed existing antitrust immunities, and has relied more heavily upon

competition, even in highly regulated industries....Establishment of an antitrust standard for the malt beverage industry potentially different from that applicable to other industries would be inconsistent with this desirable trend."

Impact of Exclusive Territories On Small Business

Small business opposes the beer bill. In a letter dated June 21, 1983, to Congressman Peter Rodino, Chairman of the House Judiciary Committee, The National Small Business Association stated in opposition to the beer bill "Our free market system and the even application of antitrust laws is the best protection for both large and small businesses."

The National Licensed Beverage Association represents over thirty thousand independently-owned bars, taverns and restaurants. In its testimony before the House Judiciary Committee on September 14, 1982 their President, Matthew Protos, said:

> "Let's not forget that antitrust laws were enacted for the protection of the small businessman and the consuming public. In this case special exemptions to these laws can only take away that protection and lay open the small businessman and consuming public to the whims of what we call the 'beer barons' who would have exclusive rights to sell their brand of beer to retailers within the boundaries of their kingdoms. As in any feudal economy, this one too would be supported on the back of the 'peasants' - in this case, the consumer."

Proponents state that transshipping wholesalers (i.e., wholesalers who are willing to go outside their designated territory to compete) merely "cherry pick" the high volume accounts and leave the small accounts for the local wholesaler. If serving small accounts is unprofitable, then the argument can be made that exclusive territories are needed for all products sold in smaller

stores. This has not been done by other wholesalers serving small stores.

Materials provided to Congress by the National Beer Wholesalers' Association state that "the established local beer wholesaler serving his own territory is required by his contract with the brewery to service all retail outlets, whether they order one case of beer or 1,000." Since exclusive territorial contracts are legal and brewers can specify the type of service to be provided small retailers, a change in the antitrust laws is not needed.

Indiana, which prohibits exclusive territories, provides a good example of how open competition works to the small retailer's advantage. Indiana beer wholesalers are eager for all business, large and small. Consequently they offer their best volume discounts to buying cooperatives of small stores. An added advantage is that instead of several deliveries from different wholesalers of different brands, the small retailer gets one delivery with all the different brands he needs and just one invoice -- an example of the marvel of competition.

ANTITRUST IMPLICATIONS AND THE BEER BILL

Court Decisions

Exclusive territories that are pro-competitive are already legal in the beer business, as in other businesses. That is the status quo. Under the guise of "clarifying" or "codifying" present law and Supreme Court decisions, the beer bill would create a different and more lenient standard only for exclusive territories in the beer industry.

The Supreme Court, in its 1977 decision Continental T.V., Inc. v. GTE Sylvania, Inc., held that non-price vertical restraints (exclusive territories being such a restraint) are to be held unreasonable only if their anti-competitive impact is not outweighed by pro-competitive justifications. They are to be judged on a case-by-case basis using the rule-of-reason analysis to weigh the pro-competitive and anti-competitive effects of the particular exclusive territory.

The beer bill makes no mention of the rule of reason. The legislation would create a new legal standard that says exclusive beer territories are pro-competitive as long as there is "substantial and effective interbrand competition." This is a more lenient standard.

In early summer 1982 the Supreme Court was deliberating the Rice v. Norman Williams case which dealt with whether or not the rule-of-reason analysis applied to cases involving exclusive territories. At the June 23, 1982 House Judiciary hearing on the beer bill, Congressman Bill Hughes asked Seymour Podolsky, a Michigan beer wholesaler testifying for the National Beer Wholesalers' Association, what would happen if the Rice v. Williams case was to affirm the use of the rule of reason. "Wouldn't that give you in essence what you are seeking here?" asked Mr. Hughes. Mr. Podolsky answered "Yes, sir; provided that every court understands exactly what it means." Mr. Hughes replied, "I think that every one tries to understand what the Supreme Court pronounces."

In July 1982 the Williams case did affirm the use of the rule-of-reason analysis.

In October 1982 (after the beer bill had failed to move in the 97th

Congress), the president of the National Beer Wholesalers' Association, Robert Sullivan, stated at the Association's convention, "The major battles to establish legal protection for territorial agreements are over." So the beer wholesalers changed their minds and decided correctly (until February 1983 when they changed their minds again) that existing law and Supreme Court decisions were sufficient protection.

When Mr. Podolsky testified he submitted twenty-five court cases involving exclusive territories to demonstrate the need for clarification of the rule of reason. None of those cases involved the beer industry. The fact is, the present antitrust laws and Supreme Court decisions regarding exclusive territories are well-understood. The beer industry faces no more litigation than other industries. Special antitrust treatment of the beer industry is unnecessary, unwarranted and ill-advised.

Justice Department Opposition

In the Justice Department's strong statement before the Senate Judiciary Committee on November 7, 1983, in opposition to the beer bill, Assistant Attorney General William F. Baxter said:

> "A different, weaker standard for judging exclusive territorial arrangements in the malt beverage industry is undesirable....There is simply no valid reason why the malt beverage industry should not continue to be subject to the same flexible and yet structured antitrust rule-of-reason analysis applicable to most other industries. Indeed, passage of S. 1680 would further erode the general applicability and utility of the antitrust laws."

Would the beer bill clarify existing law? Said Assistant Attorney General Baxter, "the term substantial and effective competition is not defined in the bill, and its meaning is unclear." Therefore, it is likely to lead to more litigation, not less.

Federal Trade Commission Opposition

The Federal Trade Commission (FTC) has testified strongly in opposition to the Malt Beverage Interbrand Competition Act, voicing concerns about the ultimate impact of the beer bill on the consumer. Said Walter T. Winslow, Deputy Director of the FTC's Bureau of Competition before the Senate Judiciary Committee on November 7, 1983:

> "Therefore, we believe that the rule of reason best serves the legitimate interests of suppliers and distributors - a desire to make their product as competitive as possible in the marketplace, - while maximizing consumer welfare. When the existing rule best serves consumers and competition, we can see no reason to introduce a new rule for the malt beverage industry.
>
> "We submit, therefore, that it would be a mistake to enact the new standard contained in (the Malt Beverage Interbrand Competition Act). The standard is at best a confusing and superfluous restatement of the current law. And if the standard represents a change in the law, it is likely to injure consumers."

The Federal Trade Commission stated another concern about the effect of creating a more lenient standard. "Moreover, since the antitrust laws currently permit pro-competitive exclusive territorial arrangements, the only exclusive territorial arrangements that could be legalized by a weakening of current antitrust standards are those arrangements whose overall effect is anti-competitive." The beer wholesalers want to put their thumb on the scale of the rule of reason to tip the law in their favor.

Proponents claim their special exemption is needed to avoid "frivolous and costly lawsuits." The implication is that the courts are flooded with suits challenging exclusive territories. In truth, the volume of litigation over the past ten years has been modest. Since the 1977

Sylvania decision there have been only five decisions reported involving exclusive beer territories and none found an exclusive territory unlawful.

American Bar Association Opposition

The Board of Governors of the American Bar Association adopted the following resolution on April 24, 1985, developed by the Bar's Section of Antitrust Law:

> WHEREAS, the Malt Beverage Interbrand Competition Act provides special treatment under the antitrust laws for exclusive territorial agreements in the beer distribution industry; and
>
> WHEREAS, present antitrust statutes, as interpreted and applied by the courts, permit the use of exclusive territorial agreements which do not unreasonably restrain competition; and
>
> WHEREAS, passage of the proposed legislation would imply that exclusive territorial agreements in other industries are less legitimate than exclusive territorial arrangements in beer distribution; and
>
> WHEREAS, passage of the proposed legislation would undermine the concept of generally applicable antitrust standards and invite other industries to seek similar exemptions from the antitrust laws;
>
> BE IT RESOLVED, THEREFORE; that the Section of Antitrust Law expresses its opposition to legislation such as the Malt Beverage Interbrand Competition Act that creates special antitrust treatment for specific industries.
>
> BE IT FURTHER RESOLVED, that this resolution be distributed to any House or Senate committee that shall consider the Malt Beverage Interbrand Competition Act or similar legislation in the 99th Congress.

State Attorneys General Opposition

The National Association of Attorneys General (NAAG) opposes the beer

bill. Three state attorneys general have so testified before Congress. Senator Jeff Bingaman, at the time Attorney General of New Mexico, testified on behalf of NAAG on July 28, 1982 before the House Judiciary Committee. He said:

> "First of all, the bill is Federal legislation in an area that we believe is more appropriately left to the states and one that is left to the states under the Constitution - in particular, the 21st amendment to the Constitution, that is, liquor law regulation or liquor regulation.
>
> " Second, it is clear to us that the bill in question is designed to benefit a particular industry, being the brewers and distributors of malt beverages and beer, and we do not see that the justification and necessary burden has been met by them to justify this particular and special treatment through legislation."

PRESERVING THE STATUS QUO

Avoiding Favored Treatment For One Industry

Proponents argue that the beer bill is needed to preserve the status quo and that beer wholesalers are being threatened. It is an argument borrowed from the soft drink bill debate, but not relevant in the beer bill debate. Before enactment of the soft drink bill in 1980, the soft drink industry faced disruption because of a Federal Trade Commission suite challenging its exclusive territorial systems.

Former Senator Birch Bayh (D-IN), author of the soft drink law, said in testimony before the Senate Judiciary Committee on October 2, 1985, "The record is clear that it was in response to the FTC decision ... that we proceeded with the Soft Drink Bill.... These unique legal characteristics and conditions which confronted the

Soft Drink industry in 1980 do not exist today insofar as the Malt Beverage industry is concerned."

In fact, it is the beer bill that would change the status quo by creating a new legal standard for judging beer exclusive territories, thereby providing that one industry with preferential treatment. Instead of the balanced rule-of-reason analysis, which weighs anti-competitive effects and pro-competitive effects equally, the beer bill would create a more lenient standard. Exclusive territories would be pro-competitive as long as there is "substantial and effective interbrand competition." The Federal Trade Commission's testimony on November 7, 1983, before the Senate Judiciary Committee in opposition to the beer bill stated: "Brewers and their chosen distributors may be pleased with a more lenient standard, but consumers and competition would surely be harmed, because a standard more lenient than the rule of reason would by definition permit some arrangements that are on balance anti-competitive."

The beer bill would upset the status quo particularly in those 22 states that are neutral regarding exclusive territories. It would upset the status quo by creating a bad antitrust precedent that will spread to other industries. It would upset the status quo by raising beer prices.

Avoiding a Dangerous Precedent

If the beer industry is granted a special antitrust exemption, other industries will seek similar treatment. Presently, same-brand competition among wholesalers is an important factor to retailers in their competitive arenas. To establish a precedent of exemptions from

antitrust statutes that could be extended to other commodities is a major concern of retailers. It is a major reason retailers oppose the beer bill regardless of whether or not their state law even permits them to sell beer, and regardless of whether or not their state law requires exclusive territories for beer.

Exclusive territories that are competitive are already legal and beer wholesalers are protected by the same antitrust laws that protect and govern America's free enterprise system. Why should they have more? No wonder the Department of Justice and the Federal Trade Commission strenuously object to the beer bill.

The Department of Justice in its Senate Judiciary Committee testimony of November 7, 1983, presented by Assistant Attorney General William F. Baxter, stated the beer bill "would invite even further attempts by other industries to seek special-interest legislation. Such a course could only lead to a patchwork of differing antitrust rules that would greatly complicate antitrust enforcement and deprive the antitrust laws of much of their utility."

Mr. Baxter emphasized the department's underlying concerns about the proposed legislation by saying:

> "As the January 1979 Report of the President's National Commission for the Review of Antitrust Laws and Procedures concluded, Congress' reliance upon the antitrust laws to protect and promote competition is abundantly justified, and exceptions from this general policy should only be made where there is 'compelling evidence of the unworkability of competition or a clearly paramount social purpose.' No such showing has been made with respect to the malt beverage industry, and we believe none could be made."

OTHER ISSUES

The Beer Industry and Soft Drink Industry Differ

The beer bill is "me too" legislation. Proponents argue that the beer industry deserves the same protection Congress gave the soft drink industry in 1980. The legislation may be the same, but the two industries have important differences. In his October 2, 1985 testimony, former Senator Birch Bayh testified that "The legislative history of the Soft Drink Interbrand Competition Act is replete with the stated acknowledgment that the bill was not designed to set a precedent for other industries and that its provisions were based on the unique characteristics and history of the Soft Drink industry." If beer distribution territories are also put beyond the reach of the antitrust laws, which industry will be next to say it is equally deserving of special protection?

On the following page is a comparison of major differences between the soft drink and beer industries. It shows that the rationale for the soft drink law cannot be used to support the beer bill.

MAJOR DIFFERENCES

SOFT DRINK	BEER
FTC found system of exclusive franchises per se illegal - system faced disruption.	No FTC, state or federal court case finding beer distribution territorial arrangements per se illegal - no legal threat to system exists.
Legislation was necessary to preserve the status quo and prevent disruption.	Legislation will upset the status quo.
Distributor is also a bottler, with additional capital requirements of an entire bottling plant, i.e., he is similar to a processor or manufacturer.	A beer distributor is strictly a wholesaler. He is not a manufacturer or processer.
No state laws specifically regulate distribution.	Highly regulated by the states - licensing and pricing laws already limit competition.
No requirement exists that there be an independent wholesaler between manufacturer and retailer.	Three-tier distribution system prevails. States require that independent wholesalers exist between brewer and retailer. Thus, wholesalers already enjoy the unusual privilege of a guaranteed place in the distribution system because they are free from vertical competition.
Nationwide system of exclusive territorial franchises used by all major soft drink manufacturers had been in place for 75 years.	Distribution system and use of exclusive territories vary from state to state.

Exclusive Territories -- Fresh Beer?

Natural market forces at the wholesale level as well as the retail level make sure consumers get fresh beer (not to mention fresh eggs, bread, milk, etc). A change in the antitrust laws is not required.

Additionally, beer is not really considered a perishable product. It has an unrefrigerated shelf life of between 75 and 120 days - quite a bit longer

than the truly perishable items sold in grocery stores. If staleness were a problem in beer, the brewers could easily open-date their products as is done with perishable items.

If exclusive territories are needed to assure the freshness of beer, then we surely need exclusive territory guarantees for the producers and wholesalers of vegetable, dairy and bakery products. This is a good example of why retailers worry seriously about the precedent that enacting the beer bill would create. If the beer industry can make a case for their bill with this shallow argument, then other industries can too. Prices of basic food commodities would go up if their producers and wholesalers began instituting exclusive territories.

Additionally, the beer industry's use of the freshness argument implies that only the brewer and wholesaler are concerned about the quality of the product. The retailer, however, is equally concerned, if not more so, because he is the first one to face the consequences of a dissatisfied customer. The point is, normal market forces are a powerful inducement to producers, manufacturers, wholesalers and retailers alike to make sure that only fresh eggs, lettuce, bread, beer, etc. are sold. Beer wholesalers do not have an exclusive on concern over product quality. A change in the antitrust laws is hardly warranted.

Transshipping

Beer wholesalers use the term transshipper to imply an interloper or bootlegger. But, a transshipper is simply a wholesaler who is willing to sell outside his territory. Regardless of the fact that this is customary practice

for other products and a natural competitive mechanism for keeping other wholesalers aggressive, efficient and price-competitive, exclusive territory beer wholesalers view transshipping differently. They are not used to intrabrand competition as are the wholesalers of other products, so the beer wholesaler sees transshipping as an evil, overly threatening practice rather than usual and acceptable competition.

Richard M. Quinn, a competitive wholesaler from Indiana, testified against the beer bill before Congress on November 7, 1983. He said, "Proponents of this legislation would have you believe that transshippers are fly-by-night opportunists. In my opinion a transshipper is just a negative way of saying competitor....[P]opponents of this legislation have painted an inaccurate and misleading picture of wholesalers who want to compete."

Proponents claim that beer wholesalers are being threatened by transshippers. If this is indeed a problem, it is more from the beer wholesaler's unwillingness to compete than from anything else.

Lenny Misciagna is an independent wholesaler, or transshipper, in New York. In his testimony before the House Judiciary Subcommittee on Monopolies and Commercial Law on November 3, 1983, he described his service this way:

> "In addition to discounting and helping to keep prices to the consumer down, the independent wholesaler performs services for the retail store. The independent mixes product, including various brands of beer and soda, and sells the mixed load to the store at truckload prices. The independent, in effect, becomes the storeroom for retail stores, delivering small loads frequently during each week, and on weekends. The independent also serves as a bank for local retail stores in that the stores need not invest large capital in beverage inventory. The franchised distributor has not and will not provide these services."

The transshipper is also depicted as the unethical businessman who sells

stale beer. The franchised wholesaler allegedly is then stuck with covering the cost of the bad product. An antitrust exemption is certainly not needed to address this problem. The marketplace and the brewer-wholesaler contract can take care of it. Such a transshipper may fool some retailers once, but not for long. He will soon be out of business for lack of customers. Transshipped beer, stale or not, can be traced to the original wholesaler by the codes on the cans. The brewer-wholesaler contract, which can prohibit transshipping, can then be enforced. (The discussion on small business also touches on the transshipper non-issue.)

Whatever competitive problems the beer wholesalers perceive are, in fact, experienced by other industries. Beer wholesalers, however, do not want to have to compete in a free market system. They seek to deal with the market place through more regulation and less competition. That is why they want the beer bill.

CONGRESSIONAL TESTIMONY STRONGLY AGAINST ENACTMENT - WILL CONGRESS LISTEN?

While beer wholesalers say the "Malt Beverage Interbrand Competition Act" is harmless and does not really change the law, the following quotes from recent Congressional testimony are indicative of the opposition to the bill, of how anti-competitive the beer bill is, and of how much the beer wholesalers stand to gain from the antitrust exemption they are trying so hard to get, through enactment S. 412, H.R. 1108 or H.R. 3793.

The quotes are from testimony before the House Judiciary Subcommittee on

Monopolies and Commercial law on November 3, 1983 (*), and before the Senate Judiciary Committee on November 7, 1983 (**), May 14, 1985(***) and October 2, 1985(****).

Richard A. Whiting

American Bar Association***

"If this legislation is passed, other industries will be quick to line up for their exemptions. You should not encourage the continued erosion of basic antitrust standards in favor of special interest groups. The law and its current interpretation are quite clear. Even if the law were not clear, the enactment of piecemeal, industry-by-industry exemption legislation is the least desirable method of clarification. Necessary changes should be made on a general basis, through judicial interpretation or carefully considered congressional action.

"The proposed Malt Beverage Interbrand Competition Act is a classic example of legislation designed to secure special treatment under the antitrust laws for a particular industry. At best the bill is unnecessary and at worst it might be interpreted as creating a standard of per se legality for vertical territorial arrangements in the beer industry or at least a different standard of legality than that applying to almost all other industries under Section 1 of the Sherman Act.

"Congress, having created a sound and effective body of law, should exercise great restraint in interfering with the working of that law, and should place a very heavy burden of proof on proponents of special exemption

legislation to show that existing procedures will involve extraordinary hardship and cause extraordinary injury to the public."

The Honorable Birch Bayh
Former United States Senator(****)

"(A)s the author and principal Senate sponsor of the Soft Drink legislation, I shall attempt to compare -- or perhaps it is more appropriate to say contrast -- the circumstances surrounding the consideration of these two pieces of legislation by the Congress. To the extent that the supporters of the Malt Beverage bill advocate its passage on the grounds that it 'is just like the Soft Drink Bill,' I should note, with all respect for the good intentions of the supporters, that there are significant differences between the two industries and the circumstances which prompted Congressional consideration of the legislation.

"The record is clear that it was in response to the FTC decision, which would have admittedly disrupted the status quo and resulted in plant closings and unemployment, that we proceeded with the Soft Drink Bill. In fact, on the first day of hearings on S. 598, I stated in my opening statement: 'This legislation is in response to a Federal Trade Commission instituted proceeding to bar as unlawful territorial franchise agreements with bottlers by soft drink syrup companies.'

"The legislative history of the Soft Drink Interbrand Competition Act is replete with the stated acknowledgment that the bill was not designed to set a precedent for other industries and that its provisions were based on the unique characteristics and history of the Soft Drink industry."

Robert Abrams
New York Attorney General*

"In price surveys conducted by the New York City Department of Consumer Affairs, soft drink prices have risen 4% in the first ten months of 1983, whereas the beer prices surveyed have risen approximately 30%. Consumer Affairs used Budweiser and Miller High Life as the beer brands surveyed. The grossly disproportionate rise in beer prices is due in large part to the effects of the distribution monopolies instituted by Anheuser-Busch and Miller Brewing in 1983.

"H.R. 2262 is a meritless piece of special interest legislation, designed solely to provide one segment of one industry with license to eliminate competition and thereby nullify the basic guidance mechanism of the American system of free enterprise."

Linley E. Pearson
Indiana Attorney General*

"[T]he first person to testify against repeal (of Indiana's Rule 28 which prohibits exclusive territories) owned a very small liquor store in Morgantown, Indiana. She testified that under exclusive territories there seemed to be little concern for quality,...her warehouseman did not check the dates of her products, and that she was never offered a promotional price or idea....In contrast, she testified her current "transshippers" never left a load of beer without going into her store and checking dates and temperatures....She further stated that her price lists showed that if Rule 28 were repealed, the price of her beer would rise at least two and possibly three dollars a case.

"As a matter of federal antitrust policy, I oppose any enactment of

legislation purporting to 'solve' an industry's particular problem, especially in an industry the regulation of which is constitutionally delegated to the states....Uncertainty as to federal law affects the climate in which the states must exercise their Twenty-first Amendment powers, and can only cause problems for the states."

Dr. Bruce Jaffee
Associate Professor of Business Economics and Public Policy,
And Director of Doctoral Programs in Business, Indiana University*

"The Indiana situation strongly suggests that both intra and interbrand price competition will be restricted if this bill is enacted. The impact on prices will be substantial; the Indiana experience suggests about 10%....Some individual differences in fact were substantially above 20%.... Simply put, the proposal is anti-consumer and anti-competitive legislation.

"Not only did local wholesalers (those who did not start the competition) not engage in any intrabrand competition until possibly 1977, there was also a remarkable absence of significant interbrand competition among these wholesalers. The common pricing scheme was to charge the same price for all popular beers, all premium beers, and all super premium beers, regardless of the brand within the category. Prices for all brands within a category were typically changed simultaneously....Thus, it appears that exclusive franchises reduced both intra and interbrand price competition."

Dr. W. John Jordan
Associate Professor of Economics, Seton Hall University, New Jersey*

"An indication of the savings to retailers available by buying from a transshipper can be found in a comparison of a recent set of prices offered by a transshipper with those set by all of the Anheuser-Busch and Miller distributors in the State....[F]or Miller High Life beer (the savings for) a 100 case purchase ranges from 5% to 17%, for 300 cases from 4% to 17%, and for 1000 cases from 1% to 17%....In addition...are the sizable amounts of savings available if a retailer could purchase from any designated wholesaler he chose. For example, retailers located in the region serviced only by Miller distributor #6 pay 12% more than retailers located in the territory controlled by Miller distributor #7.

"I was surprised at the suggestion by proponents of this bill that the establishment of exclusive distribution territories will not lead to higher beer prices for retailers and consumers. This conclusion is contrary not only to the results of my research but also to what many economists would expect to find in an industry as concentrated as the beer industry."

Jay Angoff
Public Citizen's Congress Watch*

"The industry's principle argument in support of the beer bill is that distribution monopolies are necessary to guard against stale beer...I have brought along an old can of Stroh's and a can of Stroh's I bought this morning. I would like to submit these two cans for the record, and I respectfully challenge the members of the Committee, or the Committee staff, to tell which is the old Stroh's and which is the new Stroh's."

Leonard Misciagna
The Independent Beverage Distributors Alliance, Ltd., New York*

"In addition to discounting and helping to keep prices to the consumer down, the independent wholesaler performs services for the retail store. The independent mixes product, including various brands of beer and soda, and sells the mixed load to the store at truckload prices....The independent also serves as a bank for local retail stores in that the stores need not invest large capital in beverage inventory. The franchised distributor has not and will not provide these services. The consumer will be the biggest loser of all as Budweiser and Miller prices continue to rise.

"Today, just two brands, Anheuser-Busch products and Miller products, account for approximately two out of every three cases sold in New York City. The current market power of the franchised distributors is awesome. Just two (2) Miller wholesalers and six (6) Anheuser-Busch wholesalers now control the five boroughs of New York City, all of Long Island and Westchester County -- a combined population of over 11 million people....Competition from transshipping was the only free market price control over the otherwise unbridled franchise distributors."

William F. Baxter
Assistant Attorney General, Antitrust Division
U.S. Department of Justice**

"There is simply no valid reason why the malt beverage industry should not continue to be subject to the same flexible and yet structured rule-of-reason analysis applicable to most other industries. Indeed, passage of S. 1680 would further erode the general applicability and

utility of the antitrust laws. Accordingly, the Department of Justice strenuously opposes enactment of S. 1680.

"In many, if not most, industries, the structural characteristics of production and distribution significantly reduce the likelihood that exclusive territories will or can be used to generate anti-competitive results....Unfortunately, none of the above mitigating factors is present in the malt beverage industry. Indeed, this industry appears to be one in which the risk that widespread use of exclusive territories may produce anti-competitive effects is almost uniquely high.

"As the January 1979 Report of the President's National Commission for the Review of Antitrust Laws and Procedures concluded, Congress' reliance upon the antitrust laws to protect and promote competition is abundantly justified, and exceptions from this general policy should only be made where there is "compelling evidence of the unworkability of competition or a clearly paramount social purpose." No such showing has been made with respect to the malt beverage industry, and we believe none could be made.

"In recent years, Congress has increasingly narrowed existing antitrust immunities, and has relied more heavily upon competition, even in highly regulated industries. Such movement has been seen, for example, in the airline, trucking, rail, and intercity bus industries and is presently occurring in the telecommunications and financial institution industries. Establishment of an antitrust standard for the malt beverage industry potentially different from that applicable to other industries would be inconsistent with this desirable trend."

Walter T. Winslow
Deputy Director, Bureau of Competition
Federal Trade Commission**

"First, the Commission fully supports Congress' traditional refusal to grant an industry special status under the antitrust laws unless and until the industry has presented compelling evidence of the unworkability of competition or of a clearly paramount purpose. We submit that no such showing has been made or could be made by the malt beverage industry so as to warrant special antitrust treatment.

"We are unaware of any evidence or principled argument that might justify the bill, and we believe that enactment of such unjustified special exemptions has the detrimental effect of undercutting the ability of antitrust enforcement to preserve this Nation's free market economy."

Richard M. Quinn
Sales Manager, The Beer Company
Indianapolis, Indiana**

"As one who has spent twelve years as a beer wholesaler in Indiana, both as a traditional protected wholesaler and more recently as an aggressive, competitive transshipper, I can state with complete confidence that in my experience A) It is a lot easier to operate in a protected market, and B) In order to survive in the free enterprise system, competition forces one to reduce prices, effect economies in your operation, increase volume, and target specific geographical markets as well as retail account profiles.

"Competitive wholesalers offer their best volume discount prices to buying cooperatives. That is, small retailers combine their orders and

buy as a cooperative and thus receive the same price advantage that our largest volume buyers achieve.

"Proponents of this legislation would have you believe that transshippers are fly-by-night opportunists. In my opinion transshipper is just a negative way of saying competitor.

"Proponents of S. 1680 claim that the beer industry in Indiana is in a state of chaos and shambles and that exclusive territories are needed to restore an "orderly market."...Yes, if you have the mind set of an inhabitant of an insulated little world apart from the realities of the free enterprise system, you would see Indiana's wholesale beer market as chaotic. But, it is, in effect, the real world of competition. It is healthy for business and good for the consumer.

"Proponents claim that we are free riders and they have higher costs than we do. This is simply not true. We have advertising expenses. We operate under the same brewery agreements which incur the same costs. We have a temperature-controlled warehouse, trucks painted to brewery specifications, uniformed employees who are members of Teamster Local 135, call-frequency standards, sales goals and a computerized ordering system."

MAJOR EDITORIALS

The New York Times

THE NEW YORK TIMES, SATURDAY, DECEMBER 28, 1985

Having More Than One

The distributors of beer have convinced legislators in 27 states to condone — even enforce — territorial monopolies that let a single wholesaler control sales of a given brand. Consumers probably can't do much about these costly arrangements except grin and pay up. But it isn't too late to protect the rest of the country against the beer distributors' newest assault: legislation that would effectively prevent Federal antitrust suits against exclusive distribution agreements.

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The Justice Department contends that consumers may, in some cases, benefit from territorial distribution pacts. A retailer of computers, for example, might provide free advice to potential customers before they buy, but only if he is sure they won't then buy the same machine around the corner. So the department tolerates restrictive agreements down the chain from suppliers of raw materials to manufacturers to wholesalers to retailers. They may increase efficiency and deserve the benefit of a doubt. Granting it, the department selectively challenges only those territorial distribution monopolies that are very likely to have "anticompetitive consequences."

Why, then, do the beer wholesalers want a law explicitly permitting their distribution monopolies? One answer is envy; soft-drink bottlers got a similar exemption in 1980. The deeper answer is that beer is precisely the sort of market in which distribution monopolies are likely to become an abuse and to arouse the trustbusters.

Unlike computers, beer creates no "free rider" problems; a discounter cannot easily take unfair advantage of another distributors' marketing services. Moreover, the beer business is highly concentrated; the leading four brewers sell about 80 percent of the product. If all four permit, say, a half-dozen wholesalers to distribute their products in one city, competition among the 24 wholesalers would probably be vigorous. But if four dominant brewers enforce exclusive distribution franchises, distribution becomes as concentrated as manufacturing and creates tempting opportunities for price collusion among the wholesalers.

Many states already do the monopolists' work by enforcing exclusive contracts between brewers and distributors. And court decisions, giving states special freedom to regulate alcoholic beverages, make it unlikely that Federal trustbusters will soon challenge these state arrangements.

But other states, including New York and California, lack an explicit policy favoring beer franchises. That is why the beer wholesalers are pressing Congress for protection against possible Federal suits — and why the Justice Department and the Federal Trade Commission oppose the bill.

Federal policy gives brewers and wholesalers wide latitude to market beer any way they like, provided they do not reduce competition in the process. Why fix a system that is so plainly not broke?

THE SUN

SEPTEMBER 7, 1985 BALTIMORE, MARYLAND

J.R.L. STERNE, Editorial Page Editor • REG MURPHY, Publisher • JAMES I. HOUCK, Managing Editor

Suds in Their Eyes?

Its formal title is the "Malt Beverage Interbrand Competition Act." Opponents call it the "beer-barons' bill." For consumers it would mean higher prices on a six-pack, but for beer wholesalers it would mean a lock on the distribution market of the popular alcoholic beverage, and consequently a lock on rising profits.

Beer wholesalers are pressing hard in Congress to win approval for this bill from the Senate Judiciary Committee. The measure has failed in two previous sessions. It should be defeated again. It is a clear example of special-interest legislation that runs contrary to the free-enterprise spirit of the Reagan administration. There is no compelling reason for a beer-distribution monopoly.

The measure is opposed by a broad array of groups, including consumer-interest organizations, state attorneys general, grocery and drug store associations, the Federal Trade Commission and the Justice Department. In fact, the only ones who seem to be pushing for the bill are the wholesale beer distributors.

When Prohibition was repealed in 1933, the states were given authority to regulate the distribution and sale of alcoholic beverages. Every state has a three-level system in which the wholesaler, the retailer and the brewer must remain in their separate parts of the industry. In Maryland and 25 other states, state law mandates exclusive territories for beer distributors of each company. But retailers still can go outside these territories to purchase a beer brand at a cheaper price. That helps keep competition alive a bit in Maryland. The beer bill in Congress would bar that practice and set up rigid distribution monopolies.

Why should beer distributors be exempted from the federal antitrust statutes? Competition works to the consumers' benefit. Monopolies do not. We hope that Senator Charles Mathias — who is a co-sponsor of the beer bill — will take another look at this issue before it comes up for a vote in the Judiciary Committee. He and other committee members shouldn't let suds from the beer distributors get in their eyes.

The Salt Lake Tribune

Wednesday Morning—August 28, 1985

Section A Page 16

Another Viewpoint

Beer Bill Is a Blatant Attempt at Monopoly

From The Baltimore Evening Sun

The beguiling trap of protectionism is usually thought to apply to foreign trade typically, to cite the issue presently before President Reagan, setting of quotas for such items as shoes to protect the industry from lower-priced imports.

But there is homegrown protectionism as well, and this is exemplified in what has come to be known as the beer bill. The beer bill awaits action when Congress returns in September, and that action should be defeat of the beer bill.

This bill represents a blatant effort to gain monopoly advantages for beer wholesalers by writing a special exemption into the federal antitrust laws to allow brewers to grant exclusive territorial rights to favored distributors.

The beer distributors argument is a frail reed; they contend that exclusive terrorities would ensure product freshness. The absurdity of this argument becomes apparent when we consider that all kinds of other products are far more perishable than beer from fish to potato salad and yet they do not enjoy monopoly distribution protection.

No, the real purpose in the beer bill is quite simply to limit competition so that distributors will be free to charge whatever the market will bear. If you doubt that such a monopoly affects price, look at the experience of Indiana; following repeal of a state law granting beer-distribution monopoly, beer prices dropped by 20 percent in Indiana.

The beer bill is opposed by a wide range of both business and consumer groups as well as regulatory agencies and the Department of Justice. And well it should be. Its not the beer distributor who needs protection; its the beer drinker.

OPINION PAGE

THE LOUISVILLE TIMES
WEDNESDAY, OCTOBER 16, 1985

Monopoly

Beer barons seek one

The Senate Judiciary Committee, of which Kentucky Republican Mitch McConnell is a member, is expected to vote tomorrow on anti-consumer legislation that should have beer drinkers across the nation up in arms.

The bill — the Malt Beverage Interbrand Competition Act — would in effect grant territorial monopolies to beer distributors. It would exempt from antitrust laws agreements between a brewer and a distributor establishing an exclusive sales territory if there is "substantial and effective competition" in the territory.

Supporters of the legislation, including the National Beer Wholesalers' Association, say it is necessary to ensure high-quality service to store, restaurant and bar owners and to prevent the sale of stale beer.

Horse feathers. It is competition in the marketplace, not monopoly, that gives the public the best value for its dollar. For Congress to enact legislation protecting the interests of the beer industry would be a mistake. No one stands to gain from this legislation except the brewers and the beer barons who control the territorial monopolies.

In fact, the bill likely would result in higher beer prices. That, for example, was the case when two major brewers, Anheuser-Busch and Miller, introduced territorial monopolies to New York, according to Priscilla Budeiri, a staff attorney for Public Citizen's Congress Watch. Beer prices there rose as much as 22 per cent. By the same token, when the Indiana legislature specifically outlawed exclusive territorial rights in the early 1970s, beer prices fell between 8 and 20 per cent.

That should be enough to convince Sen. McConnell and other members of the Judiciary Committee. They have no business protecting the beer industry's profits. They do have an obligation to protect the public interest and the free enterprise system.

LAFAYETTE, IND.
JOURNAL AND COURRIER
November 8, 1983

Capitol try EDITORIAL

What beer wholesalers lost in Indiana, they're trying, in another way, to get nationally with pressure for exemption from the federal anti-trust act for monopolies on exclusive selling territories.

Overflow crowds of Hoosiers turned out at the last legislative session for hearings on proposals to change Indiana law to permit the wholesalers territorial monopolies. Hoosiers' sentiments, echoed by the legislature, were a resounding no to state approval of exclusive selling territories and a loud yes for open competition for markets.

In considering an anti-trust exemption for beer wholesaling exclusive selling territories, Congress called Indiana Attorney General Linley Pearson to testify on Indiana's viewpoint, since Indiana and Virginia are the only states specifically forbidding such monopolies, exclusive of any federal anti-trust applications.

Pearson told the House subcommittee of the strong Indiana sentiments and urged the Congress not to change its anti-trust laws to accommodate a particular industry. He reminded the committee that states have constitutional authority over regulation of beer distribution and that federal anti-trust exemptions — even though such action would not directly change the state's own prohibition of selling territories — affects the climate in which the states must exercise their 21st Amendment powers.

Pearson and and Indiana know, firsthand, the determination of members of the beer wholesaling industry not to compete for business unless they have to. Congress should know it too, or will by the time the beer baron lobby applies pressures it has used in Indiana.

Pearson is right. The federal government should not even consider changing its anti-trust laws in any case where open competition is possible. It is the only pricing and supply protection the public has. And that should be the federal government's, as well as the state's, first responsiblity.

The Washington Post
Monday, September 13, 1982

The SIXPAC Bill

AMONG THE BILLS Congress is considering and that it may, in the rush of activity at the end of the session pass, is one that would almost surely raise the price of a commodity many citizens consider as American as apple pie: beer. The bill is the Malt Beverage Interbrand Competition Act (yes, that's really what they call it), and its purpose is to allow beer producers to agree to give their wholesalers exclusive rights to sell their brands in a particular territory. Its chief backers are the National Beer Wholesalers Association and its political action committee which is called, truly, SIXPAC.

That seems to us—and, more relevant, to the Justice Department and the Federal Trade Commission as well—to be an unwarranted exemption from the antitrust laws. It's illegal generally for firms that would otherwise be competitors to agree not to compete in a particular market. The reason is fairly obvious: each firm could charge what it pleased in that market. Backers of the SIXPAC bill argue that that would not be the case here, and they are partially right—but only partially. It is true that a wholesaler with exclusive rights to sell Budweiser, for example, in the Washington market would not charge too much, or he would lose sales to the wholesaler with exclusive rights to sell, say, Miller. And there could still be keen competition between wholesalers handling different brands in servicing bars and restaurants. But price competition would to some extent be dampened. Beer producers like Miller and Budweiser advertise their brands heavily, and many consumers have a strong preference for a particular brand of beer. Beer wholesalers with exclusive rights to provide such consumers with beer will be able to charge more than they would if they had competition.

The wholesaling of alcoholic beverages is already a business tightly regulated by the states, and rightly so. In many states it is a business difficult to enter. That is all the more reason, we think, not to allow division of territory between wholesalers. Advocates of the SIXPAC bill argue that Congress has already passed a bill allowing division of territory between soft-drink wholesalers; this was a measure passed after the FTC threatened a marketing arrangement that had prevailed in the soft-drink industry throughout the 20th century. But the fact that anti-competitive agreements were tolerated a long time in one business was not a good argument for legalizing them in that business and is certainly not a good reason to extend that principle to another business, one in which such territorial divisions have been illegal in most states.

Unfortunately, 278 members cosponsored the SIXPAC bill introduced by Rep. Jack Brooks (D-Tex.) in the House, and 65 members cosponsored the same bill introduced by Sens. William Proxmire (D-Wis.) and Robert Kasten (R-Wis.) in the Senate —majorities in both houses, but numbers short in each case of the two-thirds needed to override a presidential veto. We hope that the strong opposition from the Justice Department means that President Reagan will indeed veto the SIXPAC bill if it is passed, and that this will not be one of those anti-competitive laws a smart lobby slips through while ordinary citizens are not paying close attention.

EL VOCERO MERCANTIL

50¢ • AÑO XV • NUEVA YORK • NOVIEMBRE DE 1985 EL UNICO PERIODICO HISPANO DE CIRULACION NACIONAL AL SERVICIO DE LOS COMERCIANTES DETALLISTAS.

No al monopolio de la venta de cervezas

Johnny Torres

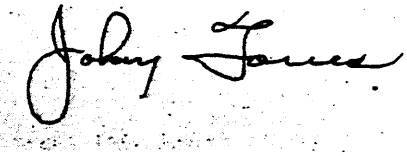
En este negocio, nunca se para. Apenas terminamos de luchar contra la Ley de la Botella o el incremento de las rentas comerciales, y ya tenemos un nuevo peligro llamando a la puerta. Se trata de un proyecto de ley que pretende obligar al comerciante a comprar las cervezas a un distribuidor que sería determinado de acuerdo a la zona, atentando con ello a los principios fundamentales de la libre empresa y a la base comercial que ha hecho de esta la nación más poderosa del mundo: la competencia comercial.

Obligando legalmente al bodeguero a comprar sus cervezas a un distribuidor previamente señalado, se está creando un monopolio comercial que está en directa contradicción con la misma libertad del individuo a emplear su dinero donde más le convenga. Esto, por supuesto, conllevaría la desaparición de precios competitivos que encarecerían la mercancía, afectando directamente tanto al comerciante como al consumidor.

El proyecto, cuyas repercusiones en la industria de la venta de víveres sería ampliamente negativo, nos parece sencillamente descabellado. ¿Cómo pueden privar al comerciante de su derecho a adquirir este producto en el lugar y el precio que más le convenga o le apetezca? ¿Es que acaso las grandes empresas procesadoras no se dan cuenta que una gran parte de las ventas de sus productos, y muy principalmente en el caso de la cerveza, se venden precisamente en estos pequeños y modestos establecimientos que ahora pretenden ahogar? ¿Es que los que respaldan esta ley no se dan cuenta que vivimos en un país libre y democrático donde las reglas de la libre empresa son los cimientos de nuestra sociedad? A ellos corresponde responder a estas preguntas. A nosotros organizarnos inmediatamente para evitar que se salgan con la suya. La **Asociación de Comerciantes Metro** se propone iniciar desde ahora la más férrea campaña para que este proyecto de ley nunca sea aprobado. Acudiremos a los políticos, a las salas de debate de la Legislatura Estatal, iniciaremos el cabildeo, recurriremos a todo lo que haya que recurrir para dar la batalla. Realmente estamos alarmados y queremos en esta columna avisar a todos los bodegueros hispanos para que se preparen para la llamada de **La Metro**. Las repercusiones de una medida de esta índole en la economía del pequeño comerciante, y su propia proyección a nivel de empleos en la misma comunidad hispana, serían graves.

El intento de monopolizar la venta de cervezas es una aberración comercial que tenemos que detener a toda costa.

La imposición de este tipo de medidas tiene su mayor impacto sobre los pequeños comerciantes, ya que estos, precisamente porque sus volúmenes de venta no son extraordinariamente grandes, no gozan de la atención o el interés de las grandes empresas procesadoras, más interesadas en llegar a arreglos económicos con las grandes cadenas de supermercados. Sin embargo, lo que estas grandes empresas parecen olvidar es que si bien las 100 o 150 cajas de cerveza que un bodeguero puede vender a la semana no tienen peso en los millones que pueden mover otros establecimientos, el multiplicar esa cantidad por los 6.500 bodegueros hispanos que aproximadamente existen en el área metropolitana de Nueva York, conlleva a una cantidad sumamente respetable. Juntos y organizados no van a tener más remedio que respetarnos.



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Suds in Your Eye

It is a rare—you might even say strange—jogger who wonders how there happens to be a cold beer on hand at the end of a hard evening's run.

But how the beer gets there is a matter of intense debate and aggressive lobbying in Congress that has the beer drinkers of America bouncing between the 21st Amendment to the U.S. Constitution and the Sherman Antitrust Act.

The largest-selling beers in California are distributed by wholesalers with exclusive franchises granted by brewers. The arrangement is blessed by state law and the 21st Amendment, which repealed Prohibition and gave states broad authority to decide how alcohol should be distributed and sold.

A market owner who wants one of these big-selling beers in stock must deal with a brewer-designated distributor. There is little haggling over the wholesale price.

The state law permits such exclusive franchises but does not require them. As a result, many brewers let distributors compete in the same territory, and liquor stores and grocers often can bargain down prices by as much as 25%.

In 1972, Indiana struck down exclusive beer distributorships. In recent years, distributors in the 13 states that permit exclusive territories have been sued repeatedly on the grounds that such franchises are monopolies and as such violate federal antitrust laws.

So beer distributors asked Congress to give them an exemption from the antitrust laws, to protect the franchise system in states where it exists.

Brewers and distributors argue that they can keep better control over their product between the brewery and the refrigerator if they can pick their own distributor.

Retailers argue that a federal exemption for beer franchises would mean that all beer eventually would go through exclusive outlets and that they could no longer shop around for a better price.

Even a strange jogger would agree that there is something to be said for keeping beer prices as low as possible, but it seems to us that there is a more important issue.

The Justice Department is resisting the exemption on the premise that beer has no better claim for special treatment than any other product.

The department's lawyers also warned Congress that every exemption from antitrust laws makes it more difficult to apply the laws to other industries.

The Justice Department advice is sound, and Congress should accept it and leave the antitrust laws as they are.

Help for Beer Lobby

THE NEWS
Florence,
South Carolina

September 6, 1982

In an era when so many interest groups have gained special favors from government, it's not surprising the nation's malt beverage industry wants its share, too. It is odd, however, that lobbyists for the breweries and their wholesalers have persuaded every member of the South Carolina congressional delegation except Sen. Thurmond to support the idea.

At issue is the proposed Malt Beverage Interbrand Competition Act. And, as the name readily implies to those familiar with political corruption of our language, the bill is as anti-competitive as can be.

This legislation would allow breweries to prohibit competition among their distributors. The wholesaler of a particular brand of beer would be assigned a territory, and no near or distant distributor of that brand could compete with him in that territory.

Congressman Carroll Campbell is quoted as giving the industry's view of the matter. "Nothing in this bill would dampen competition. Competition among all brands would be continued," he said.

In fact, retail price competition could be virtually cut off at the wholesale level. Retailers, including chain supermarkets, in a distributor's assigned territory could buy a brand of beer from only one source.

An attorney for the Justice Department's Antitrust Division, testifying against the proposed law before Sen. Thurmond's Judiciary Committee, said that just four breweries now command 67 percent of the beer market nationally, and that in most states the market share domination is much higher.

In 30 states, for instance, four breweries have in excess of 80 percent of the market. In South Carolina, four of them have more than 90 percent of the market: Anheuser-Busch, 44 percent, Miller 23 percent, Schlitz 19 percent and Pabst 5 percent.

Clearly, price competition isn't driving the major breweries and wholesale distributors who're behind this bill out of business. It's just keeping them on their toes, and allowing retailers to give their customers the best buy possible.

Probably what brought about this anti-competitive measure was the success the soft drink industry had in getting the same thing from Congress in 1980. The Reagan administration wasn't around to oppose that as it is opposing the beer industry.

Congressman Campbell and others in the South Carolina delegation were not elected by special interests, but by voters who generally want more instead of less competition in all markets.

Instead of most of the delegation working to limit beer industry competition, they should be working to put the soft drink industry back on a more competitive basis.—*The Greenville News*

CHICAGO TRIBUNE
DATE AUG 26 1982
PAGE/SECTION 10-1

Stephen Chapman

Are beer monopolies coming?

Beer monopoly. The very term is enough to curdle the blood of every God-fearing American. What if there were only one brand of beer? What if the brewer could charge whatever he wanted? What if . . . well, the possibilities are grim.

That is the specter raised by critics of a bill to legalize exclusive territories for beer distributors—in essence, monopolies on a particular brand in a particular area. A brewery designating one firm as its only wholesale outlet in Phoenix, for instance, would be able to do so without fear of anti-trust problems. The critics predict price increases of 20 percent or more if the bill passes.

Any beer drinker who resides, as I do, in Evanston, the birthplace of the Women's Christian Temperance Union, is acutely wary of any interference with the wholesome consumption of alcohol. But the threat presented by this bill is no threat at all.

We have come a long way from the 16th century Tartars, who scorned Russians for not only eating wheat—"the top of a weede," they called it—but, worse still, drinking it. The U.S. enjoys the high cultural distinction of being the world's biggest producer of beer. Americans drink 182 million barrels of beer each year, which works out to 24 gallons a year for every man, woman, and child. (That's 11 cases, if you're counting.) Those figures put us at a respectable 12th in the world in per capita consumption.

So beer legislation is serious business. But contrary to what its opponents suggest, this bill would not wreak any great change in the American beer market. Most beer is already distributed through wholesalers who enjoy territorial monopolies. The bill would merely certify the legality of these arrangements—which now are vulnerable, at least theoretically, to anti-trust lawsuits. Prices shouldn't be affected.

The talk of beer monopolies is also considerably overwrought. The critics point with alarm to the fact that 83 percent of all beer sold in this country comes from only six companies. The answer to that is: so what? Six firms is plenty, as long as there are no legal obstacles to competition—such as barriers to new firms or restrictions on price competition.

The key to monopoly is not the number of firms but how they behave, and the beer industry is intensely competitive. Ask Schlitz, which has gone from the nation's largest brewer to a struggling third (and occasionally fourth). Beer drinkers can seldom turn on the TV or radio without being wooed to Miller or Pabst. Monopolists, by contrast, don't compete for customers, because customers have no choice. There is also brisk competition among retail sellers—liquor stores, supermarkets, and taverns.

That said, it's still worth asking why even this small measure of monopoly should be allowed. The reason is that it serves the interests of both brewers and consumers. If exclusive territories were merely a way to jack up prices, why wouldn't breweries simply charge higher prices to their distributors, thus capturing the monopoly profits for themselves?

These monopolies grow out of an unfortunate characteristic of beer—its perishability. All beer begins to deteriorate as soon as it is finished brewing, and the sooner it is drunk the better it tastes. Bottled or canned beer has a shelf life of only 85 to 115 days; draft beer, which isn't pasteurized, decays even more rapidly.

If a brewer wants to protect his beer's reputation, he has to find a way to make sure it's sold while still fresh. A common solution is requiring distributors to visit retail outlets regularly to see that stocks are refrigerated and rotated. It's easy to enforce the rule on one distributor—if a brewer finds stale beer in Omaha, his Omaha distributor is to blame. With 20 distributors, it's a lot harder.

A distributor will agree to perform these costly services if he knows he can't be undercut by other distributors who don't. Benjamin Klein, a UCLA economist, says having several distributors creates a "free rider" problem: "If you have 25 distributors and one of them sells stale beer, all the distributors suffer, but the culprit bears only one-twenty-fifth of the cost—and he can charge a lower price. And a distributor who makes sure his beer is sold when it's fresh gets only one-twenty-fifth of the benefit."

It is argued that retailers will sell only fresh beer to protect their own reputations. But a beer drinker who buys a stale six-pack will probably buy a different brand the next time, rather than go to a different liquor store. In most cases, says Klein, he'll blame the brewery rather than the retailer. That's the difference between beer and other perishable goods, like bread or milk.

If this bill passes, its critics may feel like the man who hoped to die in a tavern, so the angels would say, "God be merciful to this drinker!" I hate to discourage prayer, but in this case a free and open marketplace is protection enough.

The San Diego Union
SAN DIEGO, CALIF.
D. 205,788 SUN. 325,382

SEP 24 1982

EDITORIAL

Guzzlers Beware

The fact that 75% beer drinkers vastly outnumber the brewers and distributors of their favorite beverage seems to have eluded members of Congress who otherwise are adept at counting votes. Under pressure of industry lobbyists, a majority of representatives and senators have signed on as co-sponsors of a bill that would sanction price-fixing in the beer business.

Having done their duty to the industry by sponsoring the bill, the lawmakers can now do their duty to consumers by putting it on the shelf and leaving it there.

The bill is called the "Malt Beverage Interbrand Competition Act" — or the Beer Monopoly Protection Act by those who look past the label to the murky contents of the bottle. It would exempt brewers and distributors from anti-trust laws which otherwise might be invoked to break up territorial monopolies that prevent competition in the wholesaling of beer.

The issue is not unfamiliar to California, where such monopolies are sustained by state regulations. Indeed, Indiana appears to be the only state with unregulated wholesaling of beer, and a recent survey showed that the price of a six-pack in Indiana is a quarter to half a dollar less than in surrounding states.

Under the monopoly system, a retailer can obtain a particular brand of beer only from a single distributor who has an exclusive right to sell it within his territory. The retailer cannot bargain with the brewer or another wholesaler for a better deal. The distributors argue that without their monopoly, there would be "chaos" in the distribution system. Another word for that chaos, of course, is competition.

If monopolies in beer distribution can be challenged under federal anti-trust laws, so much the better. There are said to be 72 million beer drinkers in America, compared to the 4,700 wholesale distributors who are trying to protect their exclusive rights in the marketplace with a bill in Congress. What the guzzlers lack, obviously, is a lobby of their own.

THE GREENVILLE SOUTH CAROLINA

editorials

State delegation backs beer lobby

In an era when so many interest groups have gained special favors from government, it's not surprising the nation's malt beverage industry wants its share, too. It is odd, however, that lobbyists for the breweries and their wholesalers have persuaded every member of the South Carolina congressional delegation except Sen. Thurmond to support the idea.

At issue is the proposed Malt Beverage Interbrand Competition Act. And, as the name readily implies to those familiar with political corruption of our language, the bill is as anti-competitive as can be.

This legislation would allow breweries to prohibit competition among their distributors. The wholesaler of a particular brand of beer would be assigned a territory, and no near or distant distributor of that brand could compete with him in that territory.

Congressman Carroll Campbell is quoted as giving the industry's view of the matter. "Nothing in this bill would dampen competition. Competition among all brands would be continued," he said.

In fact, retail price competition could be virtually cut off at the wholesale level. Retailers, including chain supermarkets, in a distributor's assigned territory could buy a brand of beer from only one source.

As for continued competition among brands, it would not mean much without free-market pricing of each brand, because of market domination by a few brands.

An attorney for the Justice Department's Antitrust Division, testifying against the proposed law before Sen. Thurmond's Judiciary Committee, said that just four breweries now command 67 percent of the beer market nationally, and that in most states the market share domination is much higher.

In 30 states, for instance, four breweries have in excess of 80 percent of the market. In South Carolina, four of them have more than 90 percent of the market: Anheuser-Bush, 44 percent, Miller 23 percent, Schlitz 19 percent and Pabst 5 percent.

Clearly, price competition isn't driving the major breweries and wholesale distributors who're behind this bill out of business. It's just keeping them on their toes, and allowing retailers to give their customers the best buy possible.

Probably what brought about this anti-competitive measure was the success the soft drink industry had in getting the same thing from Congress in 1980. The Reagan administration wasn't around to oppose that as it is opposing the beer industry.

Congressman Campbell and others in the South Carolina delegation were not elected by special interests, but by voters who generally want more instead of less competition in all markets.

Instead of most of the delegation working to limit beer industry competition, they should be working to put the soft drink industry back on a more competitive basis.

August 26, 1982

The Detroit News

Head Off the Beer Bill

To listen to the beer brewers and their big distributors tell it, Congress is about to do beer drinkers a terrific favor.

A bill pending in the House Monopolies subcommittee and the Senate Judiciary Committee, they say, would have the federal government guarantee an orderly supply of beer — and keep it fresh as an October morning.

But blow away the foam and it's clear the bill would almost certainly boost beer prices for many Americans. And who needs that?

Under the measure, brewing companies would be allowed to grant territorial monopolies to distributors. And once a territory was designated for a single distributor, all other distributors of the same brand would be forbidden to sell in the area. Thus, "drop-haulers," or free-lancers who pull up to a brewery with no more investment than the wholesale price of a load of beer and their own rig, wouldn't be permitted to undersell established distributors with their own fleets, warehouses, and staff.

In that way, the big distributors, who supposedly take it upon themselves to remove stale beer from taverns and grocery stores, while maintaining an orderly flow to the marketplace, would be rewarded.

Some states, including Michigan, already have laws which allow brewers to grant distributors such exclusive territories. A few states expressly prohibit exclusive territories, and the rest are silent. In practice, this means that in the majority of states the brewers already can make exclusive marketing deals with distributors. But unless state laws or regulations, as in Michigan, expressly approve such deals, the brewers and distributors are subject to anti-trust lawsuits. So big beer wants Congress to give it a little anti-trust insurance.

Two years ago, Congress granted the same sort of legislation to the soft-drink industry. The price of pop has been climbing ever since. And one congressional committee staffer says the wine industry is just waiting to see what happens with the beer bill.

The argument in favor of distribution monopolies for beer is unconvincing. It eliminates intra-brand price competition while providing no real benefit for the consumer beyond an assurance of fresh beer, which is hardly a major worry. If the bill is passed, the restrictive state legislation, as in Michigan, is reinforced, and other industries can then press their case, citing the examples of both the soft-drink and beer legislation.

That prospect makes the risk of a little stale beer seem, well, small beer.

GREENSBORO DAILY NEWS
GREENSBORO, N. C.
D. 85,775 SUN. 113,205

SEP 21 1982

A bitter brew

EDITORIAL

It may not be as powerful as, say, the trucking lobby or organized labor, but the beer lobby is said to be gaining influence fast in Congress.

That may be good news for beer wholesalers, but it's a bitter brew indeed for retailers and customers who may soon pay higher prices for the golden fluid.

The National Beer Wholesalers Association, long a relatively obcure lobbying group in Washington, is campaigning for a nifty little law designed to guarantee distributors a territorial monopoly on their own brands.

The lobby's Malt Beverage Interbrand Competition Act would prohibit the practice of transshipping — wherein big distributors of a certain brand invade the territory of a smaller wholesaler and skim off the best business by offering lower prices. In short, the bill would allow exclusive territories for sales.

Appropriately enough, the bill has been sent to the House Judiciary subcommittee on monopolies. Congressmen who support the bill, like Rep. Jack Brooks of Texas, say their purpose is to protect the smaller distributors from "predatory practices of large distributors."

The trouble is, the bill is out-and-out anti-competitive and everyone — including the U.S. Justice Department, which also opposes the bill — knows it. By keeping competitors at bay, artificial factors and not the marketplace determine the price. That can lead to price collusion as well as higher prices.

No doubt the practice of transshipping has meant hard times for some distributors, but business is full of risks. George R. Green, a spokesman for the Food Marketing Institute, says transshipping "sounds sinister, but in any other business that would be called competition."

Perhaps a better way to deal with problems stemming from transshipping is restraint within the industry itself. In the past two decades, the number of major beer manufacturers has dwindled and today just two of them —Miller and Anheuser-Busch — account for half the market. With so few manufacturers, could industry-wide cooperation be that difficult to achieve?

But whether the industry will police itself remains to be seen. The wholesalers are pushing hard for their bill and backing their pitch up with lucrative campaign donations. The beer lobby has created a political action committee — predictably enough, the committee is called SIXPAC — to pour beer money for the right candidates.

So there's at least a chance the bill will pass, and the industry has recent legislative history on its side. Three years ago, Congress granted much the same sort of concession to soft drink bottlers.

That's not enough to make this bill right. But it's enough to give this bill at least a chance. And that's enough to make you cry in your beer.

Deseret News
SALT LAKE CITY, UTAH
D. 69,600

SEP 25 1982

Kill the Beer Baron Bill

EDITORIAL

Beer drinkers, watch out. Congress is preparing some nasty news for you in the form of a little-noticed bill that just might be enacted before the lawmakers adjourn.

Officially, it's called the Malt Beverage Interbrand Competition Act. But its unofficial name — the Beer Baron Bill — is more descriptive and more telling.

This bill would give the beer industry a lucrative exemption from the anti-trust laws. In this case, what's lucrative for that industry means more money out of the pockets of beer drinkers.

But that doesn't seem to bother the measure's 230 sponsors in the House of Representatives and 44 sponsors in the Senate.

What's important, of course, is not higher prices for a non-essential and harmful commodity but the violation of the principle involved in providing a sweeping exemption from the anti-trust laws. Unlike a few such exemptions, this one serves no useful purpose and impairs the public interest.

Specifically, the bill would permit a brewer to sign a monopolist agreement giving a favored distributor the exclusive right to sell that particular brand in a given territory.

Under such an arrangement, there could still be keen competition between wholesalers handling different brands. But, as the Washington Post notes, price competition would be dampened because retailers in a particular territory would have to pay the price charged by the single distributor of a given brand. In other words, there would be less competition at the wholesale level. That's why the U.S. Department of Justice opposes the bill.

The main argument for this measure is that a similar arrangement has long been in effect in the soft drink industry and was recently approved by Congress.

Just because one industry stifles competition, however, that is not sufficient reason for making the same mistake in another line of business.

If Congress goes along with the Beer Baron Bill, President Reagan should veto it.

THE WALL STREET JOURNAL

February 22, 1984

A Beer Bill to Mug Consumers

By CHARLES E. SCHUMER

Brewers and beer wholesalers are now promoting a blatant piece of special-interest legislation aimed at giving beer wholesalers protection from competition. The beer industry is seeking a special exemption from the antitrust laws so that brewers can grant wholesalers exclusive distribution territories without fear of legal challenge. The result, as is usually the case with legislation of this sort, would be higher prices for consumers.

The bill is euphemistically titled the Malt Beverage Interbrand Competition Act. New York State Attorney General Robert Abrams, testifying against the bill, said, "the merits aside, the bill should be rejected because its very name amounts to a fraudulent misrepresentation by implying that it would foster rather than discourage competition." A more accurate title would be the Beer Monopoly Act because exclusive territories are really just monopolies. With these monopolies, every liquor store operator, grocer or tavern owner would be forced to go to the one authorized distributor for a given brand in the territory.

Supporters of the legislation, which is now before the House Judiciary Committee on which I serve, make several arguments in favor of the legislation. First, they argue that exclusive territories are necessary to ensure product freshness. However, because beer has a shelf life of three to four months, beer wholesalers have a hard time explaining why they need exclusive territories when distributors of truly perishable products such as milk, fresh orange juice, meat, bread and produce don't have similar protections. If stale beer is indeed a problem, a better solution is clear labeling of expiration dates similar to what we see on milk and bread.

Second, some beer wholesalers argue that they need protection because "transhippers" (distributors who move across primary areas of responsibility) are stealing their business. But these transhippers are simply competing businesspeople who are trying to win new customers! I always understood this to be what competition is about. Beer wholesalers apparently are uncomfortable about the uncertainty that accompanies a competitive marketplace.

Third, they argue that the bill is necessary to clarify the scope of the 21st Amendment. Under several recent court decisions, federal antitrust laws have been held not pre-empted by the 21st Amendment, which has otherwise been interpreted as granting the states broad authority to regulate the sale of alcoholic beverages. However, even if the Supreme Court sustains this position, the bill does not appear to change the rule established in Continental T.V. Inc. vs. GTE Sylvania Inc. that non-price vertical restraints (which include exclusive territorial arrangements) are neither automatically legal nor illegal. The real reason beer distributors want Congress to enact this bill is to pressure states that have not yet decided the issue to permit exclusive territorial arrangements. They will argue that Congress must want these states to approve such arrangements if it passes a law, however redundant, that declares them not to be per se illegal.

Finally, supporters argue that the existing law isn't adequate to protect against frivolous, and costly, lawsuits. We are a litigious society. But the risk of litigation is one all businesspeople face. The beer industry is no different from any other in this regard and it certainly has not shown why it needs special treatment.

Interestingly, the risk of litigation has not prevented the two giant brewers, Anheuser-Busch and Miller Brewing (subsidiary of Philip Morris), which control over 50% of all beer sales, from instituting territorial monopolies this past year. As a result, according to the New York City Department of Consumer Affairs, prices of those brands of beer have gone up 30% in the first 10 months of 1983, while soft-drink prices have gone up only 4%. This striking disparity is confirmed by research in New Jersey and Indiana showing, not surprisingly, that beer monopolies mean higher prices to consumers.

Even the Justice Department and the Federal Trade Commission, which recently have not looked unkindly at vertical restraints imposed on distributors by manufacturers, oppose the bill. Justice says that the chances of anti-competitive consequences in the beer industry are "uniquely high." The FTC told the Judiciary Committee that it is "unaware of any evidence or principled argument that might justify the bill."

This is not the first time the beer industry has sought this kind of protection. Similar legislation failed to move through either the Senate or House Judiciary Committees in the 97th Congress. Typically, however, it is the state legislatures that are asked to endorse these monopolies. When I served in Albany, the beer wholesalers proposed that exclusive territories be mandated by law. (The New York Attorney General has now proposed that they be prohibited.) Back then, however, the brewers opposed that legislation calling it "special interest favoritism, granting wholesalers a perpetual hold on the distribution of products and foreclosing by legislation any competition. . . . [It] would inevitably precipitate a price rise." Miller Brewing said that in 1976 and it was right.

In 1979, the President's Commission for Review of Antitrust Laws and Procedures concluded that exemptions from the national policy of free-market competition should only be made upon compelling evidence of the unworkability of competition or a clearly paramount social purpose. The beer industry has not made this showing. Indeed, it is beer drinkers, not beer brewers or beer wholesalers, who need protection.

Rep. Schumer is a Democrat from Brooklyn, N.Y.

INDIANA'S DEBATE ON EXCLUSIVE TERRITORIES

'Beer Baron' Not In Public Interest

Herald Telephone
Bloomington, IN
February 14, 1985

The bottom line question is whether free enterprise competitive pricing...is in the public interest, or is the public interest advanced by monopolies granted to special interests for the purpose of extracting higher prices from consumers?

The proposed "Beer Baron" legislation is not in the public interest. Support the free enterprise system - reject the special interest "Beer Baron" proposal.

George F. Zahrt
Chairman of the Board
Tippecanoe Beverages, Inc.

Distributors Look For Rule's Repeal

Pilot-News
Plymouth, IN
January 12, 1985

Greenlee and Flagg (beer wholesalers) are also not very pleased with reports from those who oppose lifting the ban (Rule 28's ban on exclusive territories) that beer prices per case will increase anywhere from $2 to $4.

"No way will it come close to a $4 increase. It will be more like $1 or $1.50 price increase from the brewery," Greenlee said.

Beer Bill No Good

Pharos-Tribune
Logansport, IN
February 11, 1985

When this bill passes, the price of beer will go up-up-up. And since beer drinkers will drink the stuff regardless of all obstacles, this means one fine profit for a very small group of men.

Keith K. Michael

Local Owner Disapproves Of Proposed Bill

Citizen
Linton, IN
February 13, 1985

Beer wholesalers favor this 'Beer Baron Bill' as it would eliminate competition in their marketing territories from all other beer wholesalers. Retailers would have one supplier of each brand and would not be allowed to purchase from any other.

Free enterprise would be lost in the beer distribution industry, small wholesalers would never have the chance to become larger. All incentive to keep prices low and to operate efficient distribution centers would be lost.

Many businesses in this country succeed and fail daily without seeking or receiving congressional attention. Much of the food industry is watching the actions on controlled territories for beer wholesalers. They are watching to see what precedent is set.

Mike Shonk
Linton Red & White

Small Stores Object To 'Beer Baron' Bill

Times
Hammond, IN
February 10, 1985

The 'beer baron' bill could push small independent package liquor stores out of business, owners told four Region legislators Saturday.

Owners said without the opportunity to shop around, they can't stay competitive with the chains, who can use liquor as a 'loss leader' to get customers into the store.

Over A Barrel

Tribune
Kokomo, In
February 10, 1985

"If this legislation passes....retailers will have no choice as to our supplier of each brand of beer. We will be required to deal with the designated distributor no matter how high the price and how unsatisfactory the service."

Beer Baron Bill Opposed

News-Gazette
Winchester, IN
February 14, 1985

Democratic Reps. Stan Jones, of West Lafayette, and Marilyn Schultz, of Bloomington, said Wednesday...."The legislation is designed to enrich distributors to the detriment of consumers."