The original documents are located in Box 33, folder "12/12/75 HR6971 Consumer Goods Pricing Act of 1975" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
DEC 12 1975
Signed on Ceremony
10:00 am - Cabinet Room
Statement Issued

THE WHITE HOUSE

WASHINGTON

December 11, 1975

ACTION

Last Day: December 15

To Archives
12/12/75

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 6971 - Consumer Goods Pricing Act of 1975

Attached for your consideration is H.R. 6971, sponsored by Representative Jordan and ten others, which would repeal two anti-trust exemptions: the Miller-Tydings Act of 1937 and the McGuire Act of 1952.

A discussion of the bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill and approval of the proposed signing statement which has been prepared by OMB and cleared by Paul Theis.

RECOMMENDATION

That you sign H.R. 6971 at Tab C.

That you approve the signing statement at Tab B.

Approve _____ Disapprove _____

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 9 197

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6971 - Consumer Goods Pricing Act of 1975
Sponsor - Rep. Jordan (D) Texas and 10 others

Last Day for Action

December 15, 1975 - Monday

Purpose

To repeal Federal anti-trust exemptions which permit States to enact so-called "fair trade" laws.

Agency Recommendations

Office of Management and Budget	Approval (Signing Statement Attached)
Federal Trade Commission	Approval
Department of Justice	Approval
Department of Commerce	Approval
Council of Economic Advisers	Approval (Informally)
Council on Wage and Price Stability	Approval (Informally)

Discussion

With the exception of differently worded titles, the enrolled bill is identical to H.R. 2390, which Representative McClory introduced on January 29, 1975 by Administration request, and S. 408, Senator Brooke's companion bill which was also introduced in January with your strong endorsement.

H.R. 6971 repeals two anti-trust exemptions: the Miller-Tydings Act of 1937 and the McGuire Act of 1952. These statutes permit States to enact "fair trade" laws allowing manufacturers to dictate, through signed agreements with their retailers, the price at which merchandise can be sold and to enforce such agreements even against retailers who refuse to

sign them. The effect of fair trade laws has been to eliminate price competition, legalize price fixing and raise the cost to the consumer of a number of commodities such as radio and television equipment, major house appliances, drugs, books, hardware, clothing and shoes.

Although at one time as many as 46 States had fair trade laws, the number today has fallen to 21. Since January alone, when the Brooke and Administration bills were introduced, 15 States have repealed fair trade laws.

H.R. 6971 will become effective 90 days after its enactment.

Because the enrolled bill constitutes a major piece of "regulatory reform" legislation, a draft signing statement is enclosed for your consideration.

James M. Frey
Assistant Director
for Legislative Reference

Enclosures

THE UNDER SECRETARY OF COMMERCE
Washington, D.C. 20230

DEC 5 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H.R. 6971, an enrolled enactment

> "To amend the Sherman Antitrust Act to provide lower prices for consumers,"

to be cited as the "Consumer Goods Pricing Act of 1975."

The purpose of H.R. 6971 is to repeal the provisions of the Miller-Tydings and the McGuire Acts which permit state fair trade laws. Without these provisions permitting states to sanction fair trade agreements, the agreements would be violations of the antitrust laws.

This Department believes that the repeal of these Acts could stimulate price competition and reduce the cost of consumer goods, and thereby make a contribution to the effort to combat inflation.

Accordingly, this Department recommends approval by the President of H.R. 6971.

Enactment of this legislation will not involve the expenditure of any funds by this Department.

Sincerely,

James A. Baker, III

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

DEC 8 1975

The Honorable James T. Lynn
Director, Office of Management
and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the views of the Federal Trade Commission upon Enrolled Bill H.R. 6971, 94th Congress, 1st Session, an Act "To amend the Sherman Antitrust Act to provide lower prices for consumers."

H.R. 6971 would repeal two federal laws exempting vertical resale price maintenance agreements from the prohibitions of the antitrust laws:

- the Miller-Tydings Act of 1937, amending Section 1 of the Sherman Antitrust Act (15 USC § 1), which permits the individual states to enact fair trade laws under which manufacturers may contractually bind retailers to a fixed sales price.

- the McGuire Act of 1952, amending Section 5 of the Federal Trade Commission Act (15 USC § 45), which allows manufacturers to extend that obligation to retailers who are not signatories to such a contract.

The language of H.R. 6971 is identical to that of S. 408, for which the Commission expressed its support on February 18, 1975, before the Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee. The Commission continues to support the repeal of the Miller-Tydings and McGuire Acts which permit the individual states to enact fair trade laws.

By allowing manufacturers to require retailers to resell at a price set by the manufacturer, state fair trade laws legalize vertical resale price-fixing agreements which otherwise would violate the antitrust laws. The fair trade laws permit competing retailers who sell a particular manufacturer's product to maintain identical prices, thus eliminating price competition among them. In addition, these laws may hinder

interbrand price competition by facilitating horizontal price-fixing efforts at the manufacturing and succeeding distributional levels. Finally, by eliminating price competition, the fair trade laws protect inefficient retailers and discourage new technology designed to meet changes in consumer preferences.

It is our belief that repeal of the Miller-Tydings and McGuire Acts will encourage market innovation, reduce prices and increase consumer choice in the marketplace. The Commission therefore strongly supports the enactment of H.R. 6971.

By direction of the Commission.

Charles A. Tobin
Secretary

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

December 8, 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 6971) "To amend the Sherman Antitrust Act to provide lower prices for consumers."

The enrolled bill would repeal exemptions in the federal antitrust laws relating to resale price maintenance under state "fair trade" laws. Resale price maintenance under the "fair trade" laws is an arrangement by which a producer or distributor of a product bearing his trademark, brand or name may enter into agreements with resellers, distributors and retailers which require the retailer to charge a minimum or stipulated resale price and may enforce those agreements through judicial proceedings. The enrolled bill would repeal the Miller-Tydings and McGuire Acts, which amended the Sherman Antitrust Act and the Federal Trade Commission Act, respectively. The Miller-Tydings and McGuire Acts authorized resale price-fixing agreements regarding transactions within states with "fair trade" laws which otherwise would be per se illegal under the Sherman Antitrust Act. Pursuant to these amendments both signers and non-signers of resale price agreements were obliged to follow the resale prices prescribed by the manufacturers marketing in accord with the various state "fair trade" laws.

Numerous studies have demonstrated that the "fair trade" laws result in higher prices to consumers than are asked in jurisdictions without "fair trading." The annual cost to consumers has been estimated at from $3 billion to $6.5 billion.

Enactment of H.R. 6971 will result in competitively arrived at lower prices to the consumer. It will eliminate the existing cover for patently illegal conspiracies in

restraint of trade arising from the encouragement given by the "fair trade" laws to agreements among competing manufacturers, among competing wholesalers, among competing retailers, and among manufacturers competing with others at different distribution levels. It will remove a condition facilitating horizontal price fixing among manufacturers. And it will prohibit the exchange of price information, which otherwise would violate the Sherman Antitrust Act, and which frequently results in horizontal stabilization of prices in purportedly competing items. Moreover, the repeal of the Miller-Tydings and McGuire Acts will attack other anticompetitive abuses, such as the boycotting of retailers refusing to enter "fair trade" agreements, the enforcing of resale price maintenance in states without "fair trade" statutes, and the erection of barriers to the entry of new retailers into the market.

Analysis of the reasons put forth in support of the "fair trade" exemptions from the federal antitrust laws establishes that those reasons retain no meaningful validity today, regardless of the significance, if any, they may have had when the Miller-Tydings and McGuire Acts were passed.

The Department of Justice strongly recommends Executive approval of this bill.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: December 10 Time: 900am

FOR ACTION: Bill Seidman ok
Paul Leach ok
Max Friedersdorf ok
Ken Lazarus ok
Paul Theis ok

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: December 11 Time: 500pm

SUBJECT:

H.R. 6971 - Consumer Goods Pricing Act of 1975

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

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Concur in signing and signing statement.

Dudley Chapman DC

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James H. Cavanaugh
For the President

DEC 10 RECD

THE WHITE HOUSE

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James H. Cavanaugh
For the President

THE WHITE HOUSE

WASHINGTON

December 11, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF M.L.F.

SUBJECT: H.R. 6971 - Consumer Goods Pricing Act of 1975

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed and that the President mention Senator Brooke as chief Senate sponsor.

Attachments

To: J. Connor
12-9-75
5:30 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 9 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6971 - Consumer Goods Pricing Act of 1975
Sponsor - Rep. Jordan (D) Texas and 10 others

Last Day for Action

December 15, 1975 - Monday

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Department of Justice	Approval
Department of Commerce	Approval
Council of Economic Advisers	Approval (Informally)
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sign them. The effect of fair trade laws has been to eliminate price competition, legalize price fixing and raise the cost to the consumer of a number of commodities such as radio and television equipment, major house appliances, drugs, books, hardware, clothing and shoes.

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H.R. 6971 will become effective 90 days after its enactment.

Because the enrolled bill constitutes a major piece of "regulatory reform" legislation, a draft signing statement is enclosed for your consideration.

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Assistant Director
for Legislative Reference

Enclosures

STATEMENT BY THE PRESIDENT

I am, today, signing into law H.R. 6971, which will make it illegal for manufacturers to fix the prices of consumer products sold by retailers. This new legislation will repeal laws enacted in 1937 and 1952 which amended Federal anti-trust law so States could authorize otherwise illegal agreements between manufacturers and retailers setting the price at which a product would be sold to consumers. Altogether, over the years, 46 States enacted such laws.

These so-called "fair trade" laws were a response to the unique economic conditions of the Depression. These laws required retail merchants to sell "brand name" merchandise at a price set by the manufacturer if the manufacturer wanted his product to be labeled a "fair trade" item. In essence, they prohibited price competition between retailers on many consumer products.

If a merchant offered consumers a discount price on a "fair trade" item, he was subject to criminal action in those States with fair trade laws. As a result, these laws prevented the American people from receiving the benefit of lower prices on cameras, watches, sporting goods, small appliances, auto supplies, and many other "brand name" products. In today's economy, these restraints on competition no longer make sense.

When this new legislation takes effect 90 days from now, retailers will again be able to set prices on a more competitive basis, thereby enabling consumers in all 50 States to shop for the best products at the lowest possible prices.

Many States already have recognized the unfairness of these laws. Since January of this year, 15 State legislatures have repealed their fair trade laws. I commend the actions of these States.

I commend the Congress as well for its bipartisan recognition that price competition is important to American consumers and for its timely consideration of this legislation. Now that H.R. 6971 is law, I hope that the Congress and the Administration will continue to work together to achieve the much needed reform of other Government laws and regulations which impose hidden and unnecessary costs on American consumers.

The best way we can protect the consumer is to identify and eliminate costly, inefficient and obsolete laws and regulations. I take pleasure in signing this bill for the benefit of the American consumer.

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As I have been saying since taking office, the best way we can protect the consumer is to identify and eliminate costly, inefficient and obsolete laws and regulations. Thus, I take particular pleasure in signing this bill for the benefit of the American consumer.

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FOR IMMEDIATE RELEASE

Office of the White House Press Secretary

THE WHITE HOUSE

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# # # #

Original to J Smith. 12/12/75

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-341

CONSUMER GOODS PRICING ACT OF 1975

JULY 9, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RODINO, from the Committee on the Judicary, submitted the following

REPORT

[To accompany H.R. 6971]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6971) to amend the Sherman Antitrust Act to provide lower prices for consumers, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

In 1937 Congress passed the Miller-Tydings Act, which created an exemption to the Federal antitrust laws for resale price maintenance agreements where such agreements were expressly permitted by State Law. In 1952 Miller-Tydings was supplemented by the McGuire Act, which permitted States to enact statutes allowing the enforcement of minimum resale prices even against retailers who refused to sign so-called "fair trade" agreements.

For a time, these antitrust exemptions were very popular. As many as 46 States at one time had so-called "fair trade" laws.

However, only 24 States retain any form of "fair trade" laws, and this number has been diminishing rapidly. Only a limited range of goods is "fair traded" today, and numerous manufacturers have decided on their own to abandon this practice.

The Judiciary Committee, after a reexamination of the justification for these special antitrust exemptions, concluded that they could no longer be supported. So-called "fair trade" laws, in the judgment of the Committee, contribute little but artificially high prices for consumers. They also facilitate horizontal price fixing by manufacturers. At the same time, the traditional justification for these exemptions—preservation of the small "Mom and Pop" retail outlet against the price competition of the discount chains—will no longer withstand scrutiny.

Thus the Committee adopted H.R. 6971, which is a simple repealer of the Miller-Tydings and McGuire exemptions, by voice vote.

The Legal Context

An agreement between a manufacturer and a retailer that the retailer will not resell the manufacturer's product below a specified price is an abvious form of price fixing, As such it is *per se* illegal under section 1 of the Sherman Act, 15 U.S.C. § 1. *United States* v. *Socony Vacuum Oil Co.*, 310 U.S. 150 (1940).

The Supreme Court first condemned resale price maintenance agreements under the Sherman Act 64 years ago. *Dr. Miles Medical Co.* v. *John D. Park & Sons*, 220 U.S. 373 (1911). In a line of subsequent decisions the Court has consistently held that such agreements are in direct violation of the system of free competition which the antitrust laws are designed to promote. See *FTC* v. *Beech Nut Packing Co.*, 257 U.S. 441 (1922); *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384 (1951); *United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960); *Albrecht* v. *Herald Co.*, 390 U.S. 145 (1968).[1]

Thus without some explicit form of Federal legislative exemption, State laws permitting resale price maintenance agreements would have no effect. *Hudson Distributors, Inc.* v. *Eli Lilly & Co.*, 377 U.S. 386 (1964). And the Supreme Court has construed the exemptions granted by Congress narrowly to preserve the Sherman Act's procompetitive policies. See *Schwegmann Bros.* v. *Calvert Distillers Corp.*, *supra.*

In this context, Miller-Tydings permitted the enforcement of resale price maintenance agreements in States which had enacted legislation to that effect.

The proponents of so-called "fair trade" sought to go further, however. Many retailers refused to sign such anticompetitive agreements, leaving the manufacturer with the choice of permitting price competition in his products or losing retail outlets. Some States responded by enacting so-called "non-signer" clauses, permitting the enforcement of minimum resale prices against non-signers so long as there was at least one retailer in the State who had signed an agreement with the manufacturer. The Supreme Court held in the *Schwegmann* case that this exceeded the scope of the Miller-Tydings exemption, and Congress responded with the McGuire Act, overruling *Schwegmann* and permitting States to enact "non-signer" clauses.

The Effect of "Fair Trade" Laws

Resale price maintenance agreements undoubtedly have certain advantages for both manufacturers and retailers. They have the effect

[1] The attitude of the Supreme Court to resale price maintenance is aptly illustrated by the history of two purported "exceptions" to the *per se* illegality of such conduct.
The Court held in *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919), that a manufacturer could announce in advance a policy to terminate all retailers who undersold his suggested retail price and could unilaterally enforce that policy by refusing to do business with those who violated his price. The Court carefully distinguished cases involving agreements between manufacturers and retailers and placed its holding exclusively upon the right of the manufacturer to choose for any reason those with whom he would deal. Subsequent cases have limited *Colgate* strictly to its own facts, finding a Sherman Act violation in the slightest hint of concerted activity. See, *e.g.*, *FTC* v. *Beech Nut Packing Co.*, 257 U.S. 441 (1922); *United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960).
In *United States* v. *General Electric Co.*, 272 U.S. 476 (1926), the Court found no violation of the Sherman Act in a scheme whereby the manufacturer of patented products sent those products on "consignment" to agents for sale at specified prices. In *Simpson* v. *Union Oil Co.*, 377 U.S. 13 (1964), the Court narrowly limited *General Electric* to cases involving patents, and cast widespread doubt on its continued validity even in that narrow area.

of eliminating price competition in the manufacturer's products between retailers who otherwise would be in a position to compete with each other. This is good for the retailer, who knows that there is no danger he will be undersold by anyone else. It is good for the manufacturer, who need not worry that price competition in his products will lead to pressure from his customers to lower his prices in order that they can compete successfully against others who undersell them. It also lets the manufacturer insulate a good part of his advertising budget from competitive danger.

"Fair Trade" practices are not good for all retailers or manufacturers, however. Some retailers prefer to try to enlarge their share of the market by competing vigorously in price—prescisely the sort of behavior encouraged by our antitrust laws. This competition is stifled by "fair trading." And some manufacturers prefer to sell more products by encouraging price competition at both the manufacturing and retailing levels. Such manufacturers do not engage in "fair trading." More and more manufacturers and retailers have been abandoning "fair trading" in favor of active price competition. As a result, "fair trading" today is confined to a relatively small and shrinking line of commodities—principally cosmetics, certain appliances, some stereo equipment, some liquor and some drugs.[2]

From the consumers' point of view, "fair trade" laws have one effect—higher prices. Precisely how much "fair trading" costs the American consumer has never been determined, but studies clearly indicate that the amount is substantial. In 1956 the Antitrust Division of the Department of Justice did a detailed comparison of the prices of 119 "fair traded" items in both "fair trade" and "free trade" jurisdictions. On 77 of the items, the average price differential was 27 percent, while on all 119 items consumers in non-"fair trade" States paid an average of 19 percent less for the products than those in "fair trade" jurisdictions. A similar Antitrust Division study in 1970 showed price differentials of up to 37.4 percent on individual items between "fair trade" and "free trade" jurisdictions. A Library of Congress study commissioned by Senator Brooke of Massachusetts this year put the annual cost of American consumers of "fair trading" conservatively in the vicinity of $3 billion. A study by Lawrence Shepard of the University of California estimated the sum at $6.5 billion per year.

Whatever the exact figure, it is beyond dispute that resale price maintenance increases the cost of products to consumers.

The practice of "fair trading" has another important anticompetitive effect which has concerned those charged with enforcement of the antitrust laws. Deputy Assistant Attorney General Keith Clearwaters of the Antitrust Division told the Monopolies and Commercial Law Subcommittee:

> Furthermore, resale price maintenance provides convenient cover for patently illegal conspiracies in restraint of trade: State "fair trade" laws give rise to agreements among com-

[2] Some concern was expressed in hearings before the subcommittee that the repeal of Miller-Tydings and McGuire might impinge in some fashion upon the power of States to regulate liquor traffic under the second section of the 21st amendment. No such effect is intended. The repeal would terminate the power of liquor manufacturers to set resale prices under a general "fair trade" statute, but would leave unimpaired whatever power the States have under the 21st amendment to regulate the importation of liquor from outside the State.

peting manufacturers, among competing wholesalers, among competing retailers, and among manufacturers competing with others at different distribution levels. Additional activities, such as boycotting of retailers refusing to enter "fair trade" contracts and the enforcing of resale price maintenance in States without "fair trade" statutes, have been inseparable concomitants of the "fair trade" laws.

Mr. Clearwaters explained that "fair trade" laws permit the effective exchange of price information which would otherwise be prohibited by the Sherman Act, and that this often leads to horizontal stabilization of prices in purportedly competing products:

> Price books can be exchanged. Announcements of changes in price are made to the industry. It may not be a smoke-filled room, but certainly the signals are made clear between the manufacturers and particularly where the manufacturers are few in number, the system works very well in pegging prices across the board in an industry at an artificially high level.

The Justifications for "Fair Trade" Laws

The principal traditional justification for "fair trade" laws has been that they protect small family-owned retail outlets—the "Mom and Pop" stores—from price-gouging by the discount chains. Proponents of this view argue that these independent retailers frequently provide ongoing service of the product and individual attention to the customer's needs, which add to their overhead and prohibit them from competing effectively in price with the chain stores.

The first difficulty with this argument is that it finds no real support in the facts. A well-known 1965 study of small-business failure rates between 1933 and 1958 did not show that such firms fared any better in "fair trade" States. To the contrary, the study by Dr. Stewart Lee of Geneva College found a higher rate of small business failures in "fair trade" States than in States without such laws. Other studies by the Department of Justice and the Library of Congress, the latter in 1972, confirm that "fair trade" States actually show higher small business failure rates. The growth rate of small businesses between 1956 and 1972 was 32 per cent higher in non-"fair trade" States. Moreover, studies conducted in places which have abandoned resale price maintenance show no adverse effect on small businesses. Experience in Rhode Island, which repealed "fair trade" in 1964, Canada, which repealed it in 1957, and Great Britain, which stopped "fair trading" in 1965, indicates generally lower prices, more vigorous competition and no adverse effects on small businesses.

Second, to the extent that the "Mon and Pop" retailer charges a higher price because he is providing more services to his customers, consumers should have the freedom to choose between paying more for those services and buying nothing but the unadorned product at a lower price from a competitor. And testimony before the Subcommittee indicated that many consumers are in fact willing to pay a somewhat higher price for the convenience, courtesy and service which small retailers are uniquely situated to provide.

Moreover, there is some indication that "fair trade" laws can actually work to stifle market entry by new small retail businesses. The most obvious device for such businesses to use to obtain a toehold in the market is price competition. Yet "fair trade" can take away this important competitive tool from a new business and help freeze it out of the market.

Another justification for "fair trade" laws advanced by the manufacturers is that it protects their "good will" investment in their trademarks—namely, their advertising budgets. It is contended that the manufacturer's investment in promotion and advertising represents an asset—the "market image" of the product—which would be destroyed if the price premium which was part of that "image" could be eliminated by intrabrand price competition at the retail level.

Chairman Lewis Engman of the Federal Trade Commission responded to this argument in his testimony before the Subcommittee:

> This argument reveals the anticompetitive essence of the fair trade laws. Simply put, the argument assumes an identity between cost and value and thereby begs the question of the competitive marketplace by denying the consumer the right to assign his own value to the intangible asset of trademark or image.

The Committee was of the view that manufacturers should not be able to insulate their advertising budgets from the effects of intrabrand competition in this fashion, and that the marketplace should be allowed to judge the value of a "brand image" without the restraints imposed by resale price maintenance.

The Subcommittee heard from one witness who offered a third justification for "fair trade" laws—that they offer a new struggling manufacturer an effective approach to retailers who otherwise would not accept his products. The witness testified from his own personal experience in the car wax industry. Both the Chairman of the Federal Trade Commission and the Deputy Assistant Attorney General rejected his conclusion and attributed the witness' own success to other elements of his highly effective sales program, particularly to his agreement to repurchase from the retailer any unsold wax, thus completely insuring the retailer against any loss. The Subcommittee agreed that no evidence had been presented which would justify any "new product" exemption from the repeal of Miller-Tydings and McGuire.

Conclusion

After reviewing the evidence before it, the Committee concluded that a continued exemption from the Federal antitrust laws for State statutes permitting resale price maintenance could not be justified. Among the witnesses before the Committee were the Chairman of the Federal Trade Commission and the Deputy Assistant Attorney General from the Antitrust Division, both of whom vigorously urged repeal of the Miller-Tydings and McGuire Acts. The Committee agreed with Deputy Assistant Attorney General Clearwaters that "'fair trade' laws are nothing more than legalized price fixing."

The Committee urges adoption of H.R. 6971.

STATEMENTS UNDER CLAUSE 2(1)(3) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

A. Oversight Statement.—The Subcommittee, in considering H.R. 6971, made no oversight findings pursuant to Clause 2(B) 1 of Rule X.

B. Budget Statement.—H.R. 6971 provides no new budget authority, or any new increased tax expenditures.

In addition Clause 2(1)(3) B of Rule XI is otherwise not applicable. Section 308(a) of the Congressional Budget Act of 1974 will not be implemented this year. (See last paragraph of House Report 94–25, 94th Congress, 1st Session, 1975).

C. No estimate or comparison from the Director of the Congressional Budget Office was received.

D. No related oversight findings and recommendations have been made by the Committee on Government Operations under Clause 2(b)(2) of Rule X.

E. Inflationary Impact Statement.—Pursuant to Clause 2(1)(4) of Rule XI, the Committee concludes that there will be no inflationary impact, as a result of this bill, on prices and costs in the operation of the national economy. On the contrary, H.R. 6971 will have the effect of lowering prices for consumers.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1 OF THE ACT OF JULY 2, 1890

An act to protect trade and commerce against unlawful restraints and monopolies.

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

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal [: *Provided*, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented, of the Act entitled "An

Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other]. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

* * * * * * *

THE FEDERAL TRADE COMMISSION ACT

* * * * * * *

SEC. 5. (a)(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

[(2) Nothing contained in this Act or in any of the Antitrust Acts shall render unlawful any contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices, for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

[(3) Nothing contained in this Act or in any of the Antitrust Acts shall render unlawful the exercise or the enforcement of any right or right of action created by any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia, which in substance provides that willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price or prices prescribed in such contracts or agreements whether the person so advertising, offering for sale, or selling is or is not a party to such a contact or agreement, is unfair competition and is actionable at the suit of any person damaged thereby.

[(4) Neither the making of contracts or agreements as described in paragraph (2) of this subsection, nor the exercise or enforcement of any right or right of action as described in paragraph (3) of this

subsection shall constitute an unlawful burden or restraint upon, or interference with, commerce.

[(5) Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.]

[6] (2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

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Calendar No. 453

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-466

ACT TO REPEAL ENABLING LEGISLATION FOR FAIR TRADE LAWS

NOVEMBER 20, (legislative day, NOVEMBER 18), 1975.—Ordered to be printed

Mr. HART, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 6971]

The Committee on the Judiciary, to which was referred the bill (H.R. 6971) to repeal exemptions in the antitrust laws permitting State fair trade laws, having considered the same, reports favorably thereon, and recommends that the bill be passed.

PURPOSE

The purpose of the proposed legislation is to repeal Federal antitrust exemptions which permit States to enact fair trade laws. Such laws allow manufacturers to require retailers to resell at a price set by the manufacturer. These laws are, in fact, legalized price-fixing. They permit competing retailers to have identical prices and thus eliminate price competition between them. Repeal of the fair trade laws should result in a lowering of consumer prices.

This proposed legislation repeals the Miller-Tydings Act which enables the States to enact fair trade laws and the McGuire Act which permits States to enact nonsigner provisions. Without these exemptions the agreements they authorize would violate the antitrust laws.

SUBSTITUTION OF H.R. 6971 FOR S. 408

A bill to repeal fair trade enabling legislation (S. 408) was introduced in the Senate in January 1975 by Edward Brooke (R-Mass.) and was passed unanimously from the Antitrust and Monopoly Subcommittee on May 5. Before this committee was able to consider S. 408, the House of Representatives passed H.R. 6971 which is identical to S. 408, except for the title of the bill. This committee voted to substitute H.R. 6971 for S. 408 in order to expedite passage of this

legislation. Without the substitution S. 408 would have had to be considered by the House after the Senate passed it. The substitution permits the bill to go directly to the President for consideration after passage by the Senate.

STATEMENT

Fair trade laws permit a manufacturer to enter into an agreement with a retailer setting the minimum or stipulated price at which his product may be sold. California passed the first State law in 1931 and other States followed. It became apparent, however, that any state law which applied to interstate commerce violated Federal antitrust laws. Thus, in 1937, Congress passed the Miller-Tydings Act granting State fair trade laws an exemption from the Sherman Antitrust Act. Some manufacturers attempted to set the resale prices not only of retailers who had signed fair trade contracts but of retailers who had not done so. In 1951, the Supreme Court in *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 314 U.S. 384 ruled this practice illegal. Congress rectified the situation in 1952 by enacting the McGuire Act which permitted States to pass fair trade laws with nonsigner clauses. However, the fair trade contract could be enforced against a nonsigner only as long as the manufacturer procured the signature of at least one retailer to a contract.

At the time S. 408 was introduced, 13 States had fair trade laws with nonsigner provisions and 23 States had fair trade laws without nonsigner provisions. The States with nonsigner provisions were Arizona, California, Connecticut, Delaware, Illinois, Maryland, New Hampshire, New Jersey, New York, Ohio, Tennessee, Virginia, and Wisconsin. The States with fair trade laws without nonsigner provisions were Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Washington, and West Virginia. By November, 15 of those States had repealed their fair trade laws. They are: Arkansas, California, Colorado, Connecticut, Florida, Iowa, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Tennessee, and Washington.

The principle products fair traded are stereo components, television sets, major appliances, mattresses, toiletries, kitchenware, watches, jewelry, glassware, wallpapers, bicycles, some types of clothing, liquor, and prescription drugs.

Liquor will not be affected by the repeal of the fair trade laws in the same manner as other products because the Twenty-First Amendment to the Constitution gives the States broad powers over the sale of alcoholic beverages. Thus, while repeal of the fair trade laws generally will prohibit manufacturers from enforcing resale prices, alcohol manufacturers may do such in States which pass price fixing statutes pursuant to the Twenty-First Amendment.

Seven days of hearings were held in the Senate. Six of those days were hearings on the bill proper. The seventh concerned an amendment proposed by several newspapers to amend the bill to permit newspapers to set maximum retail prices. The amendment was not brought to a vote because of lack of support for it.

Repeal of the fair trade laws was called for by President Ford, consumer groups, the Justice Department, the Federal Trade Commission, the Council on Wage and Price Stability, discount stores and smaller business associations. Editorials in newspapers across the country unanimously favored repeal.

Opponents were primarily service-oriented manufacturers who claimed retailers would not give adequate service unless they were guaranteed a good margin of profit. However, the manufacturer could solve this problem by placing a clause in the distributorship contract requiring the retailer to maintain adequate service. Moreover, the manufacturer has the right to select distributors who are likely to emphasize service.

While small business groups did not testify, a couple submitted statements expressing fear that there would be vicious price-cutting without fair trade. No evidence was presented to indicate that there were destructive predatory practices in states which had repealed fair trade laws. Nor were there bad effects in Canada which repealed its fair trade laws in 1957 or in Great Britain which repealed such laws in 1965. A study published in 1969 reports small retailers were not driven out of business and predatory price cutting was rare in the 4 years following repeal in Great Britain. Similar experiences have been reported in Canada.

Moreover, statistics gathered by the Library of Congress indicate that the absence of fair trade has not harmed small business. Using Dun and Bradstreet data, the Library of Congress found the 1972 firm failure rate in "fair trade" states which have the nonsigner provision was 35.9 failures per 10,000 firms, in "fair trade" States without the nonsigner provision the rate was 32.2 failures per 10,000 firms, while the failure rate in free trade States averaged 23.3 failures per 10,000 firms—in other words "fair trade" States with fully effective laws have a 55 percent higher rate of firm failures than free trade states.

Finally, the traditional argument that fair trade protects the "mom and pop" store from unfair competition is not borne out by statistics. Between 1956 and 1972 the rate of growth of small retail stores in free trade States (including states which repealed "fair trade" during this period) is 32 percent higher than the rate in "fair trade" States.

Fair trade laws are in fact legalized price-fixing. They permit competing retailers to have identical prices and thus eliminate price competition between retailers.

Studies by the Department of Justice which were cited in a 1969 Economic Report of the President, indicate that the consumer would be saved $1.2 billion a year by the elimination of the fair trade laws. Updated for inflation this figure comes to $2.1 billion. Another study of the Department of Justice estimated that fair trade laws increase prices on fair traded goods by 18–27 percent. For example, a set of golf clubs that lists for $220 can be purchased in non-fair trade areas for $136; a $49 electric shaver for $32; a $1,360 stereo system for $915 and a $560 19-inch color television for $483.

The repeal of the fair trade laws does not affect the use of suggested prices by a manufacturer. However, the use of suggested prices in such a way as to coerce adherence to them would be illegal.

Changes in Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes are made or proposed is shown in Roman):

Sherman Act (26 Stat. 209; 15 U.S.C. 1)

Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal [: *Provided*, That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition and commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: Provided further, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.] Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 45)

Sec. 45.(a)(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.

[(2) Nothing contained in this section or in any of the Antitrust Acts shall render unlawful any contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices, for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public

policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

[(3) Nothing contained in this section or in any of the Antitrust Acts shall render unlawful the exercise or the enforcement of any right or right of action created by any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia, which in substance provides that willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price or prices prescribed in such contracts or agreements whether the person so advertising, offering for sale, or selling is or is not a party to such a contract or agreement, is unfair competition and is actionable at the suit of any person damaged thereby.

[(4) Neither the making of contracts or agreements as described in paragraph (2) of this subsection, nor the exercise or enforcement of any right or right of action as described in paragraph (3) of this subsection shall constitute an unlawful burden or restraint upon, or interference with, commerce.

[(5) Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance or minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.]

(2) [(6)] The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Act to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

ADDITIONAL VIEWS OF SENATOR STROM THURMOND (R-SC) ON H.R. 6971, A BILL TO REPEAL ENABLING LEGISLATION FOR FAIR TRADE LAWS

The question should be raised as to whether it is desirable to pass Federal legislation to repeal existing fair trade laws. Under the Miller-Tydings Act and McGuire Act, the respective States are not required to enact fair trade laws and nonsigner provisions, but are merely given the opportunity to do so if they wish. Congress has permitted the States to enact fair trade laws since 1937, almost forty years ago, and reinforced that right in 1952.

I firmly believe in the fulfillment of the spirit, as well as the letter, of the Constitution of the United States regarding the Tenth Amendment's preservation of the powers and the rights of the States and the people. Some years ago, I strongly opposed the effort on the Federal level to impose a national fair trade law upon this Country. I remain concerned that the separate States be allowed to make decisions regarding fair trade laws to the greatest extent possible.

In view of my respect for the integrity of the individual States, I have given careful thought to whether the Federal Government should supplant the judgment of the States in this area. In considering this matter, I have been aware the States have not been completely insensitive to the need to make changes in this area as shown by the fact that a number of States in recent years have moved to repeal their fair trade laws.

After careful thought and analysis, I conclude that I will not dissent from the decision of this Committee to favorably report H.R. 6971. A review of the record indicates repeal of the fair trade laws in the various States should be in the best interest of the Country. Lower prices should be available to consumers, and a substantial contribution should be made in the effort to control inflation.

On balance, it appears the positive benefits produced by this legislation should outweigh any negative effects it would have. I have concluded that it is less objectionable to enact legislation disallowing fair trade laws than it is for the Congress to continue to sanction price fixing that results from the existence of fair trade laws.

○

H. R. 6971

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To amend the Sherman Antitrust Act to provide lower prices for consumers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Goods Pricing Act of 1975".

SEC. 2. Section 1 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1), is amended by striking out the colon preceding the first proviso in the first sentence and all that follows down through the end of such sentence and inserting in lieu thereof a period.

SEC. 3. Paragraphs (2) through (5) of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) are repealed and paragraph (6) of such section 5(a) is redesignated as paragraph (2).

SEC. 4. The amendments made by sections 2 and 3 of this Act shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

DECEMBER 12, 1975

Office of the White House Press Secretary

NOTICE TO THE PRESS

The President has signed H. R. 6971 - Consumer Goods Pricing Act of 1975. This bill repeals Federal anti-trust exemptions which permit States to enact so-called "fair trade" laws.

H. R. 6971 repeals two anti-trust exemptions: the Miller-Tydings Act of 1937 and the McGuire Act of 1952. These statutes permit States to enact "fair trade" laws allowing manufacturers to dictate, through signed agreements with their retailers, the price at which merchandise can be sold and to enforce such agreements even against retailers who refuse to sign them. The effect of fair trade laws has been to eliminate price competition, legalize price fixing and raise the cost to the consumer of a number of commodities such as radio and television equipment, major house appliances, drugs, books, hardware, clothing and shoes.

H. R. 6971 will become effective 90 days after its enactment.

# # #

FOR IMMEDIATE RELEASE DECEMBER 12, 1975

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
UPON SIGNING H.R. 6971
AN ACT TO REPEAL ENABLING
LEGISLATION FOR FAIR TRADE LAWS

THE CABINET ROOM

10:03 A.M. EST

Obviously, I am extremely pleased to have the opportunity of signing this very important piece of legislation, and I congratulate my former colleagues in the Congress on a bipartisan basis for the rapid and, I think, constructive enactment of this important legislation.

The repeal of the fair trade laws will permit consumers to get the discounts in all 50 States, and the best way to insure that consumers are paying the most reasonable price for consumer products is to restore competition in the marketplace. This legislation will do that.

This is one of the prime examples of how I intend to work with the Congress, the House and the Senate, on a bipartisan basis to get the Government out of unnecessary, inefficient regulation in the setting of prices and return that function to the marketplace.

I look forward to working with the Congress to restore competition in other areas of our economy now under inefficient Government regulation. I have submitted to the Congress proposed regulation, or the abandonment of regulation, in a number of areas, including financial institutions; transportation, including the airlines, the rails and the trucking areas; as well as energy, and I hope that we can work together to make some substantial progress in all of these areas.

I congratulate those who have worked with the Congress in getting this legislation through to give the consumer a better break in the marketplace so that competition will be the prime factor in insuring a fair and reasonable opportunity for the consumer to be the prime beneficiary.

I congratulate the Members of Congress, and it is a real pleasure for me on this occasion to sign this legislation.

END (AT 10:05 A.M. EST)

FOR IMMEDIATE RELEASE December 12, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

REPEAL OF FEDERAL LAWS WHICH PERMIT STATE FAIR TRADE LAWS

President Ford today signed H.R. 6971, the Consumer Goods Pricing Act of 1975. This repeals Federal antitrust exemptions which permit States to enact so-called "fair trade" laws.

BACKGROUND

Fair trade laws allow a manufacturer to enter into an agreement with a retailer setting the minimum price at which a "brand name" product may be sold. In reality, these laws allow manufacturers to dictate the price at which all retailers in a State may resell a product. As a result, price competition is eliminated between all retailers selling a product which has been designated as a "fair trade" item by the manufacturer.

The principle products covered by fair trade agreements are stereo components, television sets, matresses, kitchenware, watches, jewelry, bicycles, prescription drugs, toiletries, some types of clothing, liquor, major appliances, jewelry glassware and wallpapers.

The first State fair trade law was passed in California in 1931 and 45 other States followed over the years. However, today only 21 States have fair trade laws. Since the beginning of the year, 15 States have repealed their fair trade laws.

Repeal of the fair trade laws was called for by President Ford in January, 1975 and has had the strong support of consumer groups and others who contend that these laws are in fact legalized price-fixing and impose substantial hidden costs on American consumers. In fact, a Department of Justice estimate cited in the 1969 Economic Report of the President places the cost of fair trade laws at about $2 billion at today's prices.

HIGHLIGHTS OF THE LEGISLATION

When it became apparent that any State fair trade arrangement which applied to interstate commerce violated Federal antitrust laws, the Miller-Tydings Act (1937) and then the McGuire Act (1952) were enacted to exempt fair trade arrangements from coverage by the antitrust laws.

H.R. 6971 simply repeals these two Federal laws exempting fair trade arrangements from the prohibitions of the antitrust laws.

REGULATORY REFORM

Elimination of the fair trade laws has been one objective of the President's program to reform regulation. This program is designed to benefit consumers by encouraging increased competition, eliminating unnecessary economic regulation and strengthening the enforcement of the antitrust laws. In addition to elimination of the fair trade laws, the President has already proposed reforms of air transportation, trucking, railroads, financial institutions and energy regulation.

# # # #

FOR IMMEDIATE RELEASE December 12, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am, today, signing into law H.R. 6971, which will make it illegal for manufacturers to fix the prices of consumer products sold by retailers. This new legislation will repeal laws enacted in 1937 and 1952 which amended the Federal anti-trust laws so States could authorize otherwise illegal agreements between manufacturers and retailers setting the price at which a product would be sold to consumers. Altogether, over the years, 46 States enacted such laws.

The so-called "fair trade" laws were a response to the unique economic conditions of the Depression. These State laws require all retail merchants to sell "brand name" merchandise at a price set by the manufacturer if the manufacturer wanted his product to be labeled a "fair trade" item. In essence, these laws prohibit price competition between retailers on many consumer products.

If a merchant offers consumers a discount price on a "fair trade" item, he is subject to criminal action in those States with fair trade laws. As a result, these laws prevent the American people from receiving the benefit of lower prices on cameras, watches, sporting goods, small appliances, auto supplies, and many other "brand name" products. In today's economy, these restraints on competition no longer make sense.

When this new legislation takes effect 90 days from now, retailers will again be able to set prices on a more competitive basis, thereby enabling consumers in all 50 States to shop for the best products at the lowest possible prices.

Many States already have recognized the unfairness of these laws. Since January of this year, 15 State legislatures have repealed their fair trade laws. I commend the actions of these States.

I commend the Congress as well for its bipartisan recognition that price competition is important to American consumers and for its timely consideration of this legislation. Now that H.R. 6971 is law, I hope that the Congress and the Administration will continue to work together to achieve the much needed reform of other Government laws and regulations which impose hidden and unnecessary costs on American consumers. In particular, I hope that the Congress will support my program of regulatory reform in such important areas as air transportation, trucking and financial institutions.

As I have been saying since taking office, the best way we can protect the consumer is to identify and eliminate costly, inefficient and obsolete laws and regulations. Thus, I take particular pleasure in signing this bill for the benefit of the American consumer.

# # # #

December 3, 1975

Dear Mr. Director:

The following bills were received at the White House on December 3rd:

H.R. 5197
H.R. 6971 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.