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THE WHITE HOUSE
WASHINGTON

OMB Hearings Start Wednesday 28th
on this

July 29

THE WHITE HOUSE
WASHINGTON

Jim:

The President asked me to indicate to the Counsel's Office his concern about the course Justice appears to be on. He is not opposed to the Bottlers' Bill and I believe would prefer a hands-off position by Justice. I have communicated these views to Ed Schmults.

7/29 ^{4³⁰ P.} Jack
+ read him Marsh's note.
He said "that's very strange, thank you"
Lara

THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

July 27, 1976

MR. PRESIDENT:

Administration Position on S. 3421
(The Bottlers' Bill)

The attached memorandum from Paul O'Neill has been staffed to Messrs. Marsh, Hartmann, Buchen, Seidman, Friedersdorf and Cannon with an FYI copy to Gergen. It has resulted in the following comments:

- Marsh -- 'Because of our experience on the anti-trust matter and pursuing former position, I would like to be certain that this is thoroughly staffed in the Counsel's Office to be certain this is not a "parens Patriae-type" of issue. Therefore, I have asked for a memo on this measure from Ed Schmults who has been working on the anti-trust matter. I also point out that Commerce indicates a difference in view from Justice and, therefore, I urge careful consideration of this measure.'
- Buchen -- Support Justice. Position against bill will be important (Schmults) when President is attacked by supporters of this bill in the fall as being "weak" on anti-trust. (See Tab A for additional comments)
- Hartmann -- I concur with Justice and oppose the bill.
- Seidman -- President should know of strong political support for this bill and who supports it. I agree with Justice on merits of issue.
- Cannon -- I support the Justice Dept. position.
- Friedersdorf -- Recommend we express opposition, but not permit Justice to raise volume. Many of our Congressional friends support bill.

Jim Connor



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT

FROM:

PAUL H. O'NEILL *Ohion*

SUBJECT:

Administration Position on S.3421
(The Bottlers' Bill)

Issue

The Senate Judiciary Committee has asked the Administration for its views on S.3421, which would provide an antitrust immunity to the soft drink bottling industry. The committee may consider this legislation as early as this Wednesday. All appropriate agency views have been sought and the issue has been discussed by the Economic Policy Board. There have been no objections to having the Justice Department represent the Administration as strongly opposed to this legislation. Prior to signalling a position, we are seeking your decision.

Background

Exclusive territorial arrangements are one of several categories that permit sellers and buyers of a product to establish restraints on competition. The recently repealed state "fair trade" laws were one such category.

Arrangements permitting sellers to establish exclusive territories for their buyers have been held to be per se illegal (i.e., the plaintiff needs only to show that the arrangement exists and does not need to prove that it is anti-competitive). S.3421 would make such territorial arrangements for soft drink products immune from the anti-trust laws, provided that "substantial and effective" interbrand competition is present.

The attached Senate bill has broad bi-partisan sponsorship and it is likely that legislation will be enacted. Similar legislation easily passed the Senate in the 93rd Congress.

Justice believes that strong Administration opposition to the principle of specialized exemptions from the antitrust laws will be needed in order to stop this legislation.

There is similar but milder legislation in the House that would not grant an explicit antitrust exemption, but rather relax the rigid application of a per se standard. This legislation is expected to be reported to the House floor early next month.

Discussion

The Justice Department, which has testified against this legislation for the last five years, argues that the Senate legislation is (1) ill timed, (2) economically questionable, (3) a bad precedent and (4) inconsistent with other actions of this Congress which has supported greater enforcement of the antitrust laws.

Proponents of the legislation argue that these arrangements are not anti-competitive because there is considerable interbrand competition. Also, they state that permitting bottlers to sell their brands in other territories will allow large bottlers to undercut smaller, less efficient firms. Finally, they argue that there is no economic justification for forbidding territorial arrangements.

This legislation has already received considerable attention because of its antitrust aspects and the perceived hypocrisy of the Congress pushing for strong antitrust enforcement, on the one hand, and reducing the reach of the antitrust laws, on the other.

Justice recommends that we express strong Administration opposition to the present Senate bill while leaving open the possibility of a compromise with the House that would relax the application of stringent antitrust standards in this area.

Decision

Agree _____

Disagree _____

See me _____

Attachment

THE WHITE HOUSE

WASHINGTON

July 27, 1976

MEMO FOR: ED SCHMULTS

FROM: KEN LAZARUS ✓

SUBJECT: OMB (O'Neill) Memo re Administration
Position on S. 3421 (Bottlers' Bill)

Suggested response:

This memorandum is somewhat dated. Counsel's Office offers the following: (1) Eastland et. al. recently abandoned their position calling for an explicit exemption and are now supporting the so-called "rule of reason" approach originally advanced in the House; (2) the only remaining difference of opinion between proponents in the Senate and House is the question of an appropriate effective date -- the House supports a delayed effective date until FTC action is concluded on several pending matters while Senate supporters prefer an "upon enactment" date; (3) Eastland and the proponents are today meeting with Hart and the opposing forces on the Senate Judiciary Committee and could very possibly reach agreement, clearing the way for final Committee action tomorrow; and (4) in any event, the Committee has agreed that final Committee action on the measure will be taken not later than August 4.

This additional information should be brought to the attention of the President. However, we have no objection to the ultimate recommendation made by OMB.

Approve _____ ✓

Disapprove _____

Note: I gave this additional information to Paul O'Neill who agrees that it should be brought to the President's attention.

S. 3421

IN THE SENATE OF THE UNITED STATES

MAY 12, 1976

Mr. EASTLAND (for himself, Mr. ALLEN, Mr. BAKER, Mr. BARTLETT, Mr. BELLMON, Mr. BENTSEN, Mr. BROCK, Mr. BURDICK, Mr. CHILES, Mr. CRANSTON, Mr. CURTIS, Mr. FANNIN, Mr. GOLDWATER, Mr. HANSEN, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. McCLELLAN, Mr. McCLURE, Mr. MCGEE, Mr. MCGOVERN, Mr. MAGNUSON, Mr. MATHIAS, Mr. NUNN, Mr. RANDOLPH, Mr. WILLIAM L. SCOTT, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Federal Trade Commission Act (15 U.S.C. 45) to provide that under certain circumstances exclusive territorial arrangements shall not be deemed unlawful.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 5 (a) of the Federal Trade Commission Act
4 (15 U.S.C. 45) is amended by insertion of a new subsection
5 (3) as follows:
6 “(3) Nothing contained in this Act, or in any of the
7 antitrust Acts, shall render unlawful the inclusion and en-

1 enforcement in any trademark licensing contract or agreement,
2 pursuant to which the licensee engages in the manufacture
3 (including manufacture by a sublicensee, agent, or subcon-
4 tractor), distribution, and sale of a trademarked soft drink
5 product, of provisions granting the licensee the sole and
6 exclusive right to manufacture, distribute, and sell such
7 product in a defined geographic area or limiting the licensee,
8 directly or indirectly, to the manufacture, distribution, and
9 sale of such product only for ultimate resale to consumers
10 within a defined geographic area: *Provided*, That this sub-
11 section shall apply only if in such defined geographic area
12 (1) such product is in substantial and effective competition
13 with products of the same general class manufactured, dis-
14 tributed, and sold by others, (2) the licensee is in substantial
15 and effective competition with vendors of other products
16 of the same general class, and (3) the licensor retains con-
17 trol over the nature and quality of such product in accordance
18 with the provisions of the Trademark Act of 1946, as
19 amended (15 U.S.C. 1051).”.

20 SEC. 2. Subsections 3, 4, 5, and 6 of section 5 (a) are
21 redesignated 4, 5, 6, and 7, respectively.

22 SEC. 3. Subsection 5 (as redesignated) of section 5 (a)
23 is amended by deleting “(3)” and inserting “(4)” in lieu
24 thereof.

94TH CONGRESS
2^D SESSION

S. 3421

A BILL

To amend the Federal Trade Commission Act (15 U.S.C. 45) to provide that under certain circumstances exclusive territorial arrangements shall not be deemed unlawful.

By Mr. EASTLAND, Mr. ALLEN, Mr. BAKER, Mr. BARTLETT, Mr. BELLMON, Mr. BENTSEN, Mr. BROCK, Mr. BURDICK, Mr. CHILES, Mr. CRANSTON, Mr. CURTIS, Mr. FANNIN, Mr. GOLDWATER, Mr. HANSEN, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. McCLELLAN, Mr. McCLURE, Mr. MCGEE, Mr. MCGOVERN, Mr. MAGNUSON, Mr. MATHIAS, Mr. NUNN, Mr. RANDOLPH, Mr. WILLIAM L. SCOTT, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, and Mr. YOUNG

MAY 12, 1976

Read twice and referred to the Committee on the
Judiciary

THE WHITE HOUSE
WASHINGTON

Sara,

Jim Jura brought this by about 7:25.

I would think staffing should be Marsh, Friedersdorf, Buchen, Seidman (even though they say EPB has discussed it) Cannon, Hartmann, and Gergen (even though no press plan is involved). But you might want to check with Jim. They want a quick answer because hearings start Wednesday, they think.

Eleanor

7/26

*Ann
I would
OK
E. did it.*

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 26, 1976

Time: 7:25

FOR ACTION:

cc (for information):

- JACK MARSH
 - BOB HARTMANN
 - PHIL BUCHEN
 - BILL SEIDMAN
- FROM THE STAFF SECRETARY

- MAX FRIEDERSDORF
- JIM CANNON
- DAVE GERGERN (For information)

DUE: Date: Tuesday, July 27, 1976

Time: 2:00 PM

SUBJECT:

OMB(O'Neill) Memo re Administration Position on S. 3421
(The Bottlers' Bill)

ACTION REQUESTED:

- | | |
|---|--|
| <input type="checkbox"/> For Necessary Action | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

not - see comments
Seidman - see comments - Justice
Cannon - support Justice
Marsh - see comments
Buchen (Raynes) - support Justice address @ OMB
Hartmann - concur w/ Justice + oppose bill.

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.

James E. Connor
for the President

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 26, 1976

Time:

FOR ACTION:

JACK MARSH ✓
 BOB HARTMANN
 PHIL BUCHEN
 BILL SEIDMAN

cc (for information):

MAX FRIEDERSDORF
 JIM CANNON
 DAVE GERGERN (For information)

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, July 27, 1976

Time: 2:00 PM

SUBJECT:

OMB(O'Neill) Memo re Administration Position on S. 3421
 (The Bottlers' Bill)

(Quick turn around requested because hearings may start Wednesday,
 July 28)

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

July 27, 1976

Because of our experience on the anti trust matter and pursuing former positions, I would like to be certain that this is thoroughly staffed in the Counsel's Office to be certain this is not a "parens Patriae-type" of issue.

Therefore, I have asked for a memo on this measure from Ed Schmults who has been working on the anti trust matter.

I also point out that Commerce indicates a difference in view from Justice and, therefore, I urge careful consideration of this measure.

Jack Marsh

NOTE: DICTATED BY BUT NOT READ BY MR. MARSH.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.

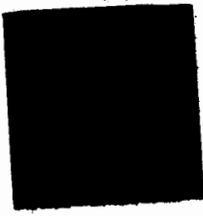
James E. Connor
 For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:



Date: July 26, 1976

Time:

FOR ACTION:

cc (for information):

JACK MARSH
BOB HARTMANN
PHIL BUCHEN
BILL SEIDMAN
FROM THE STAFF SECRETARY

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July 28)

ACTION REQUESTED:

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- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

*Support Justice. Position against
bill will be important when
President is attacked by
opponents of the bill up to
fall a being "week" on antitrust*

Edmonds 7/27

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James E. Connor
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LO

Date: July 26, 1976

Time:



FOR ACTION:

cc (for information):

JACK MARSH
BOB HARTMANN
PHIL BUCHEN
BILL SEIDMAN
FROM THE STAFF SECRETARY

MAX FRIEDERSDORF
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- Draft Reply
- For Your Comments
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REMARKS:

*President showed know of
strong political support for
this bill and who supports
it. I agree with Justice
on merits of issue
JES*

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James E. Connor
For the President

Justice believes that strong Administration opposition to the principle of specialized exemptions from the antitrust laws will be needed in order to stop this legislation.

There is similar but milder legislation in the House that would not grant an explicit antitrust exemption, but rather relax the rigid application of a per se standard. This legislation is expected to be reported to the House floor early next month.

Discussion

The Justice Department, which has testified against this legislation for the last five years, argues that the Senate legislation is (1) ill timed, (2) economically questionable, (3) a bad precedent and (4) inconsistent with other actions of this Congress which has supported greater enforcement of the antitrust laws.

Proponents of the legislation argue that these arrangements are not anti-competitive because there is considerable interbrand competition. Also, they state that permitting bottlers to sell their brands in other territories will allow large bottlers to undercut smaller, less efficient firms. Finally, they argue that there is no economic justification for forbidding territorial arrangements.

This legislation has already received considerable attention because of its antitrust aspects and the perceived hypocrisy of the Congress pushing for strong antitrust enforcement, on the one hand, and reducing the reach of the antitrust laws, on the other.

Justice recommends that we express strong Administration opposition to the present Senate bill while leaving open the possibility of a compromise with the House that would relax the application of stringent antitrust standards in this area.

Decision

Agree

Disagree

See me

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 26, 1976

Time:

FOR ACTION:

cc (for information):

JACK MARSH

MAX FRIEDERSDORF

BOB HARTMANN

JIM CANNON

PHIL BUCHEN

DAVE GERGERN (For information)

BILL SEIDMAN

FROM THE STAFF SECRETARY

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Time: 2:00 PM

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(The Bottlers' Bill)

(Quick turn around requested because hearings may start Wednesday,
July 28)

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

*I support the
Justice Dept position*
Jul

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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delay in submitting the required material, please
telephone the Staff Secretary immediately.

James E. Connor
For the President



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

MEMORANDUM FOR THE PRESIDENT

FROM: PAUL H. O'NEILL *Ohion*
SUBJECT: Administration Position on S.3421
(The Bottlers' Bill)

Issue

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The attached Senate bill has broad bi-partisan sponsorship and it is likely that legislation will be enacted. Similar legislation easily passed the Senate in the 93rd Congress.

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Justice recommends that we express strong Administration opposition to the present Senate bill while leaving open the possibility of a compromise with the House that would relax the application of stringent antitrust standards in this area.

Decision

Agree _____

Disagree _____

See me _____

Attachment

94TH CONGRESS
2D SESSION

S. 3421

IN THE SENATE OF THE UNITED STATES

MAY 12, 1976

Mr. EASTLAND (for himself, Mr. ALLEN, Mr. BAKER, Mr. BARTLETT, Mr. BELL-
MON, Mr. BENTSEN, Mr. BROCK, Mr. BURDICK, Mr. CHILES, Mr. CRANSTON,
Mr. CURTIS, Mr. FANNIN, Mr. GOLDWATER, Mr. HANSEN, Mr. HELMS, Mr.
HOLLINGS, Mr. HUMPHREY, Mr. McCLELLAN, Mr. McCLURE, Mr. MCGEE,
Mr. MCGOVERN, Mr. MAGNUSON, Mr. MATHIAS, Mr. NUNN, Mr. RANDOLPH,
Mr. WILLIAM L. SCOTT, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr.
THURMOND, Mr. TOWER, and Mr. YOUNG) introduced the following bill;
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to provide that under certain circumstances exclusive terri-
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1 enforcement in any trademark licensing contract or agreement,
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5 product, of provisions granting the licensee the sole and
6 exclusive right to manufacture, distribute, and sell such
7 product in a defined geographic area or limiting the licensee,
8 directly or indirectly, to the manufacture, distribution, and
9 sale of such product only for ultimate resale to consumers
10 within a defined geographic area: *Provided*, That this sub-
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12 (1) such product is in substantial and effective competition
13 with products of the same general class manufactured, dis-
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15 and effective competition with vendors of other products
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17 trol over the nature and quality of such product in accordance
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2D SESSION

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MAY 12, 1976

Read twice and referred to the Committee on the
Judiciary

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 26, 1976

Time:

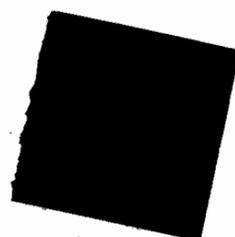
FOR ACTION:

JACK MARSH
BOB HARTMANN
PHIL BUCHEN
BILL SEIDMAN

FROM THE STAFF SECRETARY

cc (for information):

MAX FRIEDERSDORF *M.F.*
JIM CANNON
DAVE GERGERN (For information)



DUE: Date: Tuesday, July 27, 1976

Time: 2:00 PM

SUBJECT:

OMB(O'Neill) Memo re Administration Position on S. 3421
(The Bottlers' Bill)

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July 28)

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

*Recommend we express
opposition, but not
permit Justice to raise
volume. Many of our
Congressional friends support
bill.*

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.

James E. Connor
For the President