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THE ECONOMIC IMPACT OF REPEALING FAIR TRADE LAWS*

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Passage of S. 408 and H.R. 3411 by the Ninety-Fourth Congress marked the repeal of federal fair trade laws, effective January 1, 1976. After 40 years of fair trade, consumer advocates welcomed repeal as "an idea whose time has come."[1] However, the reform was greeted with trepidation by producers who predicted "the chaos of price wars," "a return to the law of the jungle," and "ruin (of) the last vestige of the small business community."[2] With uncharacteristic unanimity of opinion, economists also anticipated that significant changes in retail prices, marketing practices, and industry structure would attend repeal.[3] This paper has as its objective the presentation of preliminary data on the effects of repealing fair trade legislation.

Fair trade marketing or "resale price maintenance" enabled manufacturers to require retailers to charge producer-specified prices on certain goods. The legal footing of this practice lay in the Miller-Tydings Act of 1937 which created exemptions in the Sherman Act and the Federal Trade Commission Act to permit vertical price fixing. Like other price fixing and industry consolidation policies that grew out of the Depression,[4] the legislation that allowed states to enact fair trade laws constituted an aberration in federal antitrust policy. The extreme haste with which states adopted these statutes illustrates that fair trade was at least in part the product of frightened policy makers who mistook falling prices as the source rather than the symptom of economic deflation.[5] In 1952 the pricing power of producers was further strengthened by the McGuire Act which provided for nonsigner clauses binding all retailers in a state to charge fair trade prices as long as at least one retailer agreed to do so.

At its height, fair trade was enforced in all states except Alaska, Missouri, Texas, and Vermont. During the 1960s and 1970s, however, seven states repealed fair trade laws and in 24 states nonsigner clauses were held to be unConstitutional. At the time of the federal repeal on January 1, 1976, there were 14 free-trade states and 36 fair-trade states (Table 1). Thirteen of the latter enforced nonsigner provisions.

The Controversy

The debate surrounding fair trade has centered upon the policy's impact on consumer prices, levels of customer service, and small retailers. Advocates of fair trade have argued that by maintaining the market prices of their goods, manufacturers can prevent retailers from engaging in loss leader marketing. It is alleged that selling some products at discount prices deceives consumers and injures producers by tarnishing the image of a product's quality. Thus, fair trade is said to improve consumer welfare and protect the investments of manufacturers in advertising and trademarks.

Proponents also contend that the higher retail markups associated with maintained prices enable sellers to provide more customer service than price competitive markets produce. Such services as instore salespersons, product demonstrations, and promotion are said to benefit consumers by augmenting the information available to them. Similarly, it has been argued that extra features like comfortable showrooms, conveniently located outlets, and the availability of credit make buying easier and that superior after-sale service improves the performance of products. In the view of its proponents fair trade furthers the public interest by affording such services.

Table 1: Fair Trade Acts; Constitutionality by State

State	Fair trade	Nonsigner clause
Alabama	Unconstitutional	Unconstitutional
Alaska (no enactment)		
Arizona	Constitutional	Constitutional
Arkansas		Unconstitutional
California	Constitutional	Constitutional
Colorado	Constitutional[a]	Unconstitutional (repealed)
Connecticut	Constitutional	Constitutional
Delaware	Constitutional	Constitutional
Florida	Constitutional[a]	Unconstitutional
Georgia		Unconstitutional
Hawaii (repealed-1963, 1967)		
Idaho		Unconstitutional[a]
Illinois	Constitutional	Constitutional
Indiana	Constitutional	Unconstitutional
Iowa		Unconstitutional
Kansas (repealed-1963)		
Kentucky	Constitutional	Unconstitutional
Louisiana	Constitutional	Unconstitutional
Maine		Repealed
Maryland	Constitutional	Constitutional
Massachusetts	Constitutional	Unconstitutional
Michigan	Constitutional	Unconstitutional
Minnesota		Unconstitutional
Mississippi (repealed-1970)		
Missouri (no enactment)		
Montana	Unconstitutional	Unconstitutional
Nebraska (repealed-1959)		
Nevada (repealed-1965)		
New Hampshire	Constitutional	Constitutional
New Jersey	Constitutional	Constitutional
New Mexico	Constitutional	Unconstitutional
New York	Constitutional	Constitutional
North Carolina	Constitutional	Unconstitutional
North Dakota		
Ohio:		
1936 act		Unconstitutional
1959 act	Constitutional	Constitutional
Oklahoma		Unconstitutional
Oregon	Constitutional	Unconstitutional
Pennsylvania	Constitutional	Unconstitutional
Rhode Island (repealed-1970)		
South Carolina	Constitutional[a]	Unconstitutional
South Dakota	Constitutional	Unconstitutional
Tennessee	Constitutional	Constitutional
Texas (no enactment)		Unconstitutional
Utah	Unconstitutional	
Vermont (no enactment)		
Virginia	Constitutional	Constitutional
Washington	Constitutional	Unconstitutional
West Virginia	Constitutional	Unconstitutional
Wisconsin	Constitutional	Constitutional
Wyoming	Unconstitutional	Unconstitutional

[a]indicates lower court decision.

Source: Commerce Clearing House. Trade Regulation Reporter, pp. 9087-9088.

A final traditional rationale for fair trade has been that it tends to protect smaller, locally owned retail establishments in the face of competition from chain stores which enjoy marked economies of scale. A variation of this argument holds that fair trade precludes large retailers from adopting a predatory pricing strategy at the expense of smaller competitors. In the long run, then, the policy might enhance competition by supplanting excessive price rivalry.

Opponents of fair trade have been quick to counter these arguments. The loss leader defense of fair trade has been labelled deficient because in many states selling any item below costs is per se illegal under the business and professions codes. Moreover, the argument that selling a product at lower prices tarnishes its image is based on the premise that consumers' perceptions of product quality are more influenced by price than by actual quality. If this were in fact true, opponents argue, it would undermine the contention frequently voiced by fair trade manufacturers that their products are of superior quality--unless one accepts that producers incur the costs associated with higher quality strictly out of benevolence toward consumers. Finally, opponents point out that perceived quality is likely to be more influenced by advertising and salesmanship than by price. Since fair trade, by raising markups, allows retailers to increase expenditures on sales staff and promotion, the policy could diminish rather than increase the influence of a buyer's independent assessment of product quality. The related predatory pricing argument advanced by fair trade proponents has been refuted on the grounds that federal antitrust laws proscribe such conduct and because in 14 states orderly retailing has continued to flourish under free trade.

Opponents concede that fair trade augments levels of customer service. However they contend that this is not necessarily desirable since shoppers foot the bill for "free" services. The success of cash and carry, discount, and self-serve retailing indicates that many consumers prefer less service in return for price concessions. Fair trade, it is argued, tends to limit consumer choice by forcing buyers to pay boutique prices for a rich mix of services whether they desire them or not.

Finally, opponents assert that if, as fair trade supporters contend, price maintenance serves to protect small retailers, it must be true that in the absence of fair trade consumers would prefer to shop elsewhere. That is, buyers, given the choice, would not willingly pay for the service and convenience of small, local outlets. In this way fair trade is said to controvert the will of consumers and protect otherwise economically unviable enterprises.

The Economic Issues

Economic theory has not been without implication in this controversy about the effects of fair trade and its repeal. First, theory suggests that resale price maintenance has the potential to raise prices above competitive levels by stifling local price competition among retailers. Moreover, the policy extends the market power of oligopolistic manufacturers to the retail level, facilitating horizontal price fixing. In the words of Dr. Frederic M. Scherer,

> Fair trade laws . . . give oligopolistic producers firmer control over the prices at which their products are ultimately sold, thereby permitting them to prevent retail price-shading which might induce retaliatory price cuts by rival manufacturers.[6]

On the other hand, because retailing does not exhibit the cost structure typically associated with "destructive" competition or predatory pricing, there is little reason to believe a priori that price maintenance statutes are necessary to protect consumers from restraints on trade.

Empirical economic analyses confirm that fair trade raises prices. One study indicated that the average cost of 54 drug items was 16.2 percent less in St. Louis, Missouri than in East St. Louis, Illinois where fair trade prevailed.[7] Liquor prices were 16 percent lower in the former city.[8] In a separate analysis in four free trade areas, 208 items were found to sell at a 17 percent discount from their maintained prices elsewhere.[9] A Department of Justice study discovered a 19 percent price disparity.[10] These mutually consistent findings verify theoretical precepts and suggest that lower prices would be associated with the repeal of fair trade.

Economic theory is also consistent with the proposition that resale price maintenance augments levels of customer service. Indeed, it is axiomatic in economics that when price competition is supplanted, nonprice competition through extra services will exceed levels observed in price competitive markets. Entrepreneurs, unable to alter price to profit-maximizing levels, attempt to expand market shares by increasing services to the point where marginal costs, increased by nonprice competition, equal price.[11] This type of competitive behavior is most conspicuous in industries like banking, airlines and stock brokerage where rates have been absolutely fixed by regulatory resolve or private conspiracy.[12] In retailing markets, where many prices are fixed by fair trade, firms can be expected to attract customers through such devices as salesmanship,

personalized service, free delivery, extended hours of business, and well located outlets. Accordingly, in states where the prices of spirits and patent medicines have been subject to fair trade laws, one finds liquor and drug stores offering such services more extensively than, for example, food retailers who operate larger, more impersonal cash and carry stores. The repeal of fair trade, then, could be expected to alter the conduct of retail trade by attenuating nonprice competition.

Finally, theory prescribes that fair trade can affect the structure of retailing. By guaranteeing competitors a higher mark-up, the policy serves to attract more market entrants than competitive pricing would sustain. As Thomas Gale Moore has pointed out, this serves the interests of producers by broadening channels of distribution, but the resulting excess capacity among retailers reduces sales per outlet and, with it, industry efficiency.[13] So long as they carry a rich mix of fair traded products for which prices are fixed, inefficient stores can survive since they will be insulated from the threat of price cuts initiated by chain stores and discounters. Thus fair trade may harbor inefficiency without augmenting the returns of small retailers.

The Empirical Evidence

Just as theory implies that fair trade increases retail prices, service competition and number of stores, so its repeal may be expected to reduce prices, diminish nonprice competition, and cause consolidation among retailers. These three economic hypotheses are tested below using data drawn from fair trade and free trade states eighteen months after repeal in early 1976. While economic theory provides relatively little

insight into the precise timing of competitive interactions, the price impact of repealing fair trade may emerge before changes in nonprice variables due to the relative ease with which price adjustments can be effected. Changes in market structure, on the other hand, represent a more prolonged competitive adjustment that could require a number of years to surface.

Prices

Analysis of the influence of fair trade policies on prices has long been handicapped by lack of an index of fair trade prices. However, there is wide agreement that many household furnishings, apparel items, and personal care products are covered by price maintenance agreements. Thus, changes in the corresponding components of the Consumer Price Index can be scrutinized for tentative evidence concerning repeal's effects. The proposition that lower prices are associated with repeal would be confirmed by a significantly smaller rate of change in these indexes after repeal on January 1, 1976 in the 17 Standard Metropolitan Statistical Areas lying in fair trade states than for SMSA's in free trade areas.

As Table 2 indicates, during the three months following repeal the index of all nonfood items exhibited an average increase of 0.71 percent in the fair trade areas versus 0.83 percent elsewhere. Although consistent with the hypothesis that repeal tended to reduce consumer prices, this disparity is not statistically significant. However, the household furnishings and apparel indexes, which include a greater proportion of fair trade items, increased at a significantly lower rate in fair trade SMSA's during the first quarter of 1976. The 0.58 and 1.03 percentage point differences in the mean rates of price change suggest that repeal had its

Table 2: Mean Percent Changes in CPI Components
(December 1975 to February 1976)

Component	SMSA's in free trade states	SMSA's in fair trade states	Difference	Standard error	t
Nonfood items	0.83%	0.71%	0.12%	0.40	0.30
Household furnishings	3.13%	2.55%	0.58%*	0.22	2.64
Apparel	1.76%	0.73%	1.03%*	0.41	2.51
Personal care	1.70%	1.23%	0.47%†	0.35	1.34

*significant at the .025% level.

†significant at the .10% level.

Source: U.S. Bureau of Labor Statistics, CPI Detailed Report, February 1976.

expected price impact. Note that the prices of personal care products also rose at a slower rate where price maintenance was lifted, but that the differences were not as pronounced.

Further evidence of repeal's price impact was derived from a sample of fair trade products constructed in 1975 at the University of California, Davis. Prices of the 200 products were gathered during the first two weeks in December 1975 and December 1976 in Northern California at a wide variety of chain and independent, discount and retail, and specialty and department stores. A total of 62 stores were included. Forty-seven of the products in the original sample had to be eliminated due to model changes and discontinued items.

Average price changes for the sample are compared with national CPI changes during the 12 month period in Table 3. Despite the fact that the overall rate of inflation observed in the sample area by the Bureau of Labor Statistics (5.05 percent) somewhat exceeded the U.S. average (4.80 percent), prices on fair trade products appear to have fallen relative to corresponding changes in the CPI components which include free trade and fair trade items. That is, in all groups except dinnerware, prices rose more rapidly for products in the national CPI sample than in the fair trade sample. Differences were most pronounced for toiletries, watches, and televisions. For those groups, prices in the CPI sample typically increased, while prices for items in the fair trade sample fell during 1976. Prices rose for fair traded apparel but not as rapidly as the corresponding CPI component. While in the absence of a consumption-weighted index for fair trade products the absolute magnitude of repeal's price impact cannot be established, these aggregated results provide further

Table 3: Percent Changes in CPI Components and Sample Prices (December 1975 to December 1976)

Product group	Change in CPI component	Mean price change--fair trade sample	Difference	Standard error	t	Number of observations
Furniture and bedding	+3.2%	+2.5%	+0.7%†	0.49	1.43	124
Toilet goods	+5.4%	-1.4%	+6.8%*	1.15	5.91	166
Apparel	+4.5%	+3.9%	+0.6	1.00	0.60	110
Appliances	+4.6%	+1.2%	+3.4*	0.82	4.15	86
Dinnerware	+7.9%	+10.0%	-2.1*	1.03	2.03	124
Wristwatches	+2.3%	-1.4%	+3.7*	1.69	2.18	56
Television sets	+0.1%	-11.6%	+11.7*	1.34	8.55	28

†significant at the .10% level.

*significant at the .025% level.

Source: U.S. Bureau of Labor Statistics, CPI Detailed Report, December 1976, p. 22.

tentative evidence that abolishing price maintenance has led to lower retail prices in the sample area than would have otherwise prevailed.

More detailed information about the impact of repeal on the pricing strategies of retailers was derived by applying analysis of variance to the fair trade sample results. In particular, an effort was made to compare the pricing patterns of chain stores with independents, discount with nondiscount stores, and specialty shops with department stores subsequent to repeal. To this end the relationship

$$\Delta P^{ij} = \beta_0^i + \beta_1^i D^{ij} + \beta_2^i D_2^{ij} + \beta_3^i D_3^{ij} \qquad j = 1, n; \quad i = 1, 9$$

was estimated using ordinary least squares for the j^{th} fair trade product in the i^{th} product group.[14] Variable ΔP^{ij} represented the percent change in price between that charged in December 1976 and the fair trade price prevailing in December 1975. D_1^{ij} was a dichotomous variable assigned a value of one for observations gathered in chain stores and zero for independents. Dichotomous variable D_2^{ij} assumed a value of one where a retailer identified a store as a "discount" outlet and zero elsewhere. The final term, D_3^{ij}, equaled one for specialty stores and zero for outlets carrying multiple product groups.

The hypothesis that these types of stores responded differently to the repeal of fair trade products would be confirmed by estimated values of β_1^i, β_2^i, and β_3^i that departed significantly from zero. For this segment of the study the sample was extended to include garden care products and tools which are frequently fair traded but are not represented in a CPI component. The sample consisted of 858 observed price changes associated with 153 items in nine product groups. Partial correlation coefficients between values of the independent variables were low reflecting

the sample's inclusion of discount stores that were and were not independents, specialty houses that were and were not discount outlets, and so on.

Contrary to the expectations of fair trade proponents, repeal was not associated with extensive price cutting by chain stores at the expense of independents (Table 4). Rather, the positive values of the β_1 coefficients illustrate that chain stores increased the prices of toiletries, apparel, major appliances and dinnerware significantly more than other outlets. Repeal, which was expected to intensify local price rivalry and widen variation in prices, may in fact have worsened the competitive position of chains which favor centrally established uniform prices. Indeed, one chain store manager indicated to a surveyor that over the objections of headquarters he had belatedly abandoned the firm's price list on expensive items in order to meet the competition of local independents. Another chain discounter had resorted to sending staff "shoppers" to nearby competitors on a daily basis to see if the chain's nationally advertised prices were competitive. Where this was not the case, the store at times had undercut its own published prices. The data indicate that chain store prices were persistently lower than independents only for wristwatches.

The sample also provides little support for the contention that in the absence of fair trade, multi-line department stores would underprice specialty stores. This was only the case for toilet goods where the average price was 11.07 percent higher at specialty stores than at outlets offering multiple product groups. On the other hand, during a period when TV prices were generally falling, television shops appeared to

Table 4: Analysis of Variance for Fair Trade Price Sample

Product group	Estimated coefficient β_0	β_1 (chain stores)	β_2 (discount stores)	β_3 (specialty stores)	R^2	N
Furniture and bedding	11.55* (1.95)	3.94 (7.72)	-23.97* (3.60)	8.41 (8.24)	0.31	124
Toilet goods	0.65 (0.59)	10.00† (7.00)	-6.28* (3.37)	11.07* (3.70)	0.12	166
Apparel	2.37 (2.82)	10.34* (5.06)	-15.35* (5.00)	5.98 (5.56)	0.22	110
Appliances	-11.35† (5.96)	7.07† (4.44)	0.34 (3.15)	-6.28 (7.87)	0.13	56
Dinnerware	0.04 (4.00)	11.50* (5.28)	-7.57† (5.18)	-0.51 (3.72)	0.13	124
Wristwatches	2.47† (1.39)	-14.52* (7.18)	-6.20 (6.13)	1.48 (6.70)	0.19	56
Television sets	-4.76 (5.11)	-5.05 (6.09)	-9.35* (3.39)	-7.20* (3.39)	0.53	56
Garden care products	5.65 (4.87)	3.39 (7.19)	-14.25† (9.53)	2.75 (6.08)	0.11	108
Tools	11.00 (15.49)	-3.21 (10.72)	-18.67* (9.73)	-2.03 (17.44)	0.18	58
Entire sample	4.51† (1.45)	-0.12 (1.82)	-11.57* (1.55)	-1.76 (1.68)	0.13	858

*significant at the .025% level.

†significant at the .10% level. Parenthetical figures represent standard errors.

undercut the prices of department stores on fair trade items by seven percent. In most cases, however, the pricing of specialty and nonspecialty shops did not differ significantly.

As was anticipated by opponents of repealing the price maintenance statutes, the data reveal that discount outlets systematically reduced prices on goods that had been fair traded. For the entire sample discount firms are estimated to have undercut the prices of nondiscounters by more than 11 percent from the uniform rates charged in December 1975. The effect of discounting was especially pronounced in the furniture, apparel, and tool groups where prices were shaded by an average of from 15 to 24 percent. In major appliances and wristwatches, discounters did not price their fair trade products significantly differently from other retailers subsequent to repeal. With those two exceptions, the results strongly confirm that repeal has permitted discounters to reflect the efficiencies of mass merchandizing in their pricing of previously fair traded products, affording consumers a choice between lower prices at discount retailers and higher prices at conventional service-oriented stores. Because this choice was not available on fair trade goods prior to repeal, the data support the conclusion that abolishing price maintenance made available lower prices for most product groups in the sample area.

Taken as a whole, the data cited above are consonant with the theoretical prediction that fair trade inflates retail prices above competitive levels and that its repeal tends to counteract this effect on goods that had been subject to fair trade. However, there is little reason to believe that chain stores have used their financial strength to underprice independents or that specialty stores have not matched the prices of

department stores. Instead, price competition has been initiated by stores identified by their managers as "discount" outlets, irrespective of their status as chain stores or independents, specialty houses or multi-product outlets.

Nonprice Competition

While somewhat less compelling than the evidence on prices, the data indicate that moving towards greater price competition at the retail level has diminished nonprice competition through promotion and customer services. In this connection Table 5 reports the average advertising linage purchased by retailers in the major newspapers of 108 large U.S. cities.[15] In accordance with economic theory, the mean level of advertising in the 82 fair trade areas, 28.97 million lines, exceeded the mean figure for free trade states, 24.93 in 1975. The 16 percent difference is statistically significant at the .025 percent level. While in 1976 advertising was still more intensive in fair trade regions, note that the rate of increase in published retail advertising during the year following repeal was substantially lower in the fair trade cities. This relative reduction in advertising competition among retailers in fair trade areas coincided with the heightened price competition associated with repeal during 1976.

A second nonprice competition variable, number of employees engaged in retail sales, increased by an average rate of 3.04 percent between December 1975 and December 1976 in free trade states. The corresponding increase for states which had enforced price maintenance statutes was only 2.33 percent. While of marginal statistical significance, the observed difference is consistent with the proposition that price competition

Table 5: Indicators of Nonprice Competition in Free Trade and Fair Trade Jurisdictions

	Free trade	Fair trade			Difference fair trade vs. free trade	Standard error	t	N	Unit
		Without nonsigner clause	With nonsigner clause	Both					
Retailer newspaper advertising									
1975 average linage (millions)	24.93	27.40	30.71	28.97	4.04*	1.78	2.27	106	cities
1976 average linage (millions)	26.55	28.22	31.78	29.91	3.36†	1.92	1.75	106	cities
1975-1976 mean change in linage (percent)	+12.47	+7.84	+3.00	+5.53	6.94*	0.99	7.01	106	cities
Sales employees									
1975-1976 mean change (percent)	+2.94	+2.56	+1.97	+2.33	0.61	0.53	1.15	49	states

*significant at the .025% level.

†significant at the .10% level.

Sources: "1975 Total Advertising Linage in 1319 Newspapers," Editor and Publisher, May 29, 1975, pp. 1L-11L; "1976 Total Advertising Linage in 1244 Newspapers," ibid., May 28, 1977, pp. 1L-14L; U.S. Department of Labor, Employment and Earnings, Vol. 24 No. 2, February 1977.

and nonprice competition are substitutes. Note that growth of the retail work force was especially slow in states which prior to 1976 had enforced nonsigner clauses compelling all retailers to respect fair trade agreements.

Market Structure

By fixing markups at abnormally high levels, fair trade tends to attract more market entrants to retailing than would be sustained in a price competitive environment. Due to the resulting excess capacity, retailing may be less stable in fair trade states and its repeal in those states can be expected to cause consolidation among merchants. State bankruptcy rates shed some light on this matter since retailers account for nearly half of all business failures. In line with Professor Stewart Munro Lee's well publicized findings covering the period 1933 to 1958, Table 6 reveals that commercial bankruptcies per 100,000 population were significantly higher in fair trade states prior to repeal. While the mean failure rate decreased by 7.55 percent in free trade states during the year following repeal, it increased by 3.43 percent where prices had been subject to fair trade. While the proportion of this increase originating in the retailing sector cannot be determined using data available to date, it is noteworthy that business failures increased at a significant rate in fair trade states during a period characterized by economic recovery nationally.

The evidence available on how stores of different size were affected by repeal is somewhat contradictory. The last line in Table 6 indicates that between 1975 and 1976 large department stores increased in number nationwide and that the rate of increase was more rapid in fair trade

Table 6: Mean Indicators of Changing Market Structure Among Retailers in Free Trade and Fair Trade Jurisdictions

	Free trade	Fair trade	Difference	Standard error	t	N	Unit
Business failures							
1975 failures per 100,000 population	2.78	5.11	2.33*	0.35	6.66	50	states
1976 failures per 100,000 population	2.26	4.44	2.18*	0.31	7.03	50	states
1975-1976 percent change in failures per 100,000 population	-8.64	+0.35	8.99	8.45	1.06	50	states
1975-1976 percent change in failures	-7.55	+3.43	10.98*	5.05	2.17	50	states
Major department stores							
1975-1976 percent change in number of stores	+2.46	+3.87	1.41†	0.78	1.81	131	cities

*significant at the .025% level.

†significant at the .10% level.

Source: Dunn and Bradstreet, Monthly Failures, March 26, 1977, p. 3; U.S. Department of Commerce, Monthly Retail Trade, March 1976 and March 1977.

jurisdictions. While fair trade's repeal could be expected to benefit larger outlets at the expense of smaller stores, this result is of borderline statistical significance and could arise from other sources. The impact of repeal on number of larger stores is most certainly a long-run effect which would partially escape 1976 data.[16] Nationally, there appears to have been minor change in the distribution of bankruptcies across liability categories during the year following repeal (Table 7). Because these categories correspond approximately to store size, there is little reason to believe that smaller retailers fared worse than large retailers or vice versa.

Summary

The public controversy surrounding fair trade and the economic issues associated with its repeal have centered on consumer prices, levels of nonprice competition, and the structure of retail trade. This study has presented evidence indicating that the abolishment of federal fair trade statutes has reduced some consumer prices, particularly those charged by discount outlets. There is little evidence, however, that the pricing policies of chain stores or department stores have become more aggressive on fair trade items since repeal.

Competition among retailers through newspaper advertising appears to be more intensive in fair trade states. However, since repeal there has been significantly less growth in retail advertising in those areas. Other evidence suggests that nonprice competition reflected in the hiring of sales staff is also diminishing as price rivalry emerges where prices had previously been maintained.

Table 7: U.S. Retail Failures by Size of Liability (1975-1976)

Size of liabilities	1975 Number	1975 Percent	1976 Number	1976 Percent
Under $5,000	150	3.1	61	1.5
$5,000 to $25,000	1,049	21.8	861	20.8
$25,000 to $100,000	2,321	48.4	2,128	51.4
$100,000 to $1,000,000	1,189	24.8	1,028	24.8
$1,000,000 and over	90	1.9	61	1.5
	4,799	100.0	4,139	100.0

Source: Dunn and Bradstreet, Monthly Failure Record, March 26, 1977, p. 1.

Changes in industrial structure may also have been associated with repeal. Available data illustrate that the frequency of business failures increased substantially in fair trade states during 1976 despite a nationwide decline in bankruptcies. However, no apparent trend toward failure by stores of any particular size can be detected.

This paper represents the first report on a continuing study concerning the effects of repealing the Miller-Tydings and McGuire Acts. Further work will be required in order to analyze price and bankruptcy figures as they are published later in 1977. Results from a questionnaire completed by more than 100 retailers also must be evaluated. Finally, the price data analyzed above by product group will be investigated by manufacturer in conjunction with the California Attorney General's Office to determine whether alternative means are being employed by some firms to enforce manufacturer-specified retail prices. More definitive conclusions as to the impact of repealing fair trade laws must await the completion of this research.

nh 7/20/77

Footnotes

1. Statement of Senator Edward Brooke, Congressional Record, January 27, 1975, pp. 1338-1339.
2. U.S. Senate, Committee on the Judiciary, Fair Trade Laws, Washington, 1975, p. 64.
3. Ibid., pp. 49-52; 147-151.
4. For example, the National Industrial Recovery Act, the Agricultural Adjustment Act, the Appalachian Coals decision, and milk price-fixing legislation in many states were promulgated in 1933.
5. So hasty were fair trade deliberations that those states which held hearings failed to make transcripts of their discussions. Moreover, several misprints contained in the original California legislation were repeated in a majority of states; Clair Wilcox, Public Policies Toward Business, Homewood, Illinois: Irwin, 1960, p. 381.
6. U.S. Congress op.cit., p. 171. Also see Frederic M. Scherer, Industrial Markets Structure and Economic Performance, Chicago: Rand McNally, 1971, p. 515.
7. "The Not-So-Fair Trade Laws," Fortune, Vol. 39, No. 1, January 1949, p. 70.
8. Congressional Record, May 7, 1952, p. 4986.
9. Statement by Senator Douglas, ibid., July 1, 1952, p. 8912.
10. U.S. Congress, Committee on Interstate and Foreign Commerce, Fair Trade, Washington, 1959, pp. 506-507.
11. The theory of nonprice competition has been elaborated by George J. Stigler, "Price and Nonprice Competition," Journal of Political Economy, Vol. 72, February 1968, pp. 149-154; Alfred E. Kahn, The

Economics of Regulation, Vol. II, New York, John Wiley and Sons, 1971, p. 209; and Lawrence J. White, "Quality Variation When Prices are Regulated," Bell Journal of Economics and Management Science, Vol. 3, No. 2, August 1972, pp. 425-436.

12. Almarin Phillips, ed., Promoting Competition in Regulated Markets, Washington, DC: Brookings Institution, 1975; Lawrence Shepard, The Securities Brokerage Industry, Lexington, Massachusetts: D. C. Heath, 1975.

13. U.S. Senate, op. cit. p. 51.

14. The equivalence of analysis of variance and regression on dummy variables is discussed by Ronald J. Wonnacott and Thomas H. Wonnacott, Econometrics. New York: John Wiley and Sons, 1970, pp. 77-80.

15. The sample consisted of cities included in the U.S. Department of Commerce, Monthly Retail Trade for which 1975 and 1976 advertising linage figures were available.

16. The passage of repeal legislation was widely anticipated following the hearings on S. 408 early in 1975. Accordingly, repeal could have influenced store openings for outlets requiring a two year planning period or less.