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The Economic Effects of Repealing Fair Trade Laws

Legislation in 1976 abolishing fair trade appears to have led to limited price cutting among retailers. In particular, stores identified by their managers as being "discount" outlets were found to have undercut the prices of other stores in most product groups while the pricing policies of chain stores and multi-line stores have not become more aggressive on fair trade items since repeal. Limited evidence indicates that a reduction in nonprice competition in the form of newspaper advertising and sales personnel has also attended repeal. Finally, a substantial increase in the frequency of business failures in fair trade states during 1976 indicates that a consolidation among retailers may have coincided with the abolishment of uniform, manufacturer-specified retail prices.

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, pp. 1338–1339]. 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" [11, p. 64]. With uncharacteristic unanimity of opinion, economists also anticipated that significant changes in retail prices, marketing practices, and industry structure would attend repeal [11, pp. 49–52, 147–151]. In balance, these changes were expected to benefit consumers at some cost to retailers and manufactur-

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ers. This paper has as its objective the presentation of data on the effects of repealing fair trade legislation observed to date. Particular attention is devoted to establishing how repeal has altered the pricing behavior of various types of stores in order to evaluate the predictions of repeal opponents and to provide a guide to consumers.

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,[1] 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.[2] 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 who carried an item to charge fair trade prices as long as at least one retailer agreed to do so.

At its height in the early 1950's, fair trade was enforced in all states except Alaska, Missouri, Texas, and Vermont. However, by the latter part of that decade manufacturer support for price maintenance had begun to decline. Between 1956 and 1958 fair trade pricing was abandoned by Westinghouse, Eastman Kodak, Bell and Howell and General Electric among others [3, p. 275]. In a number of states fair trade statutes were repealed or held unconstitutional between 1959 and 1975, further circumscribing resale price maintenance. At the time of federal repeal on January 1, 1976, 36 states had fair trade laws. Of these, 13 enforced nonsigner clauses. Even where fair trade agreements had been maintained, their effectiveness in fixing prices had eroded due to inadequate enforcement, the growth of discount retailing and the ambiguous position of some manufacturers who gained retailer goodwill by publicly support-

[1]For example, the National Industrial Recovery Act, the Agricultural Adjustment Act, the *Appalachion Coals* decision, and milk price-fixing legislation in many states were promulgated in 1933.

[2]So hasty were fair trade deliberations that few states held hearings and those states which held hearings failed to make transcripts of their discussions. Moreover, several misprints contained in the original California legislation were repeated in the legislation of a majority of states [13, p. 171].

ing fair trade but increased their volume of business by condoning price cutting [4, p. 117]. As a result, Consumers Union estimated that the proportion of retail sales subject to fair trade fell by half between 1959 and 1974 [3, p. 281].

THE CONTROVERSY

The Case for Fair Trade

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, drawn almost exclusively from the business community, 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 have contended 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 promotions are said to benefit consumers by augmenting the information available to them. Similarly, retailers and manufacturers argue that extra features such as 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.

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 is said to enhance competition by supplanting excessive price rivalry.

The Case Against Fair Trade

Consumer groups and others who oppose fair trade have countered these arguments in a vocal and compelling manner. For example, in testimony before the Senate Committee on the Judiciary, Carol Foreman,

speaking for the Consumer Federation of America contended that price maintenance is an affront to retailers since it deprives them of the right to set their prices, relegating them to the role of manufacturer's distributors [11, p. 26]. The Department of Justice has refuted the loss leader and predatory pricing defenses of fair trade by pointing to other laws that proscribe such behavior [11, p. 173]. The contention that selling a product at lower prices will tarnish its image has been discredited with the counter argument that consumer perceptions of product quality are more strongly influenced by promotion than by price. By raising markups, fair trade, it is argued, encourages increased expenditures on product branding, advertising, and sales staffs thereby *diminishing* the importance of a buyer's independent assessment of product quality in purchase decisions.

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

Another rationale for fair trade, that it protects small firms, is also disputed. For example, the Federal Trade Commission cites evidence that failure rates for small retailers have been *greater* in fair trade states than elsewhere [11, pp. 21–23]. Moreover, consumer advocates point out that, to the extent that uniform, manufacturer-specified prices *may* protect small stores from failure, it must be true that in the absence of fair trade consumers would prefer to shop elsewhere. That is, buyers would not willingly pay for the service and convenience of small, local outlets if they have a choice. In this way fair trade may controvert the will of consumers and protect enterprises that otherwise would not be economically viable. Finally, opponents of fair trade including the Smaller Business Association of New England and the National Association of Catalogue Showroom Merchandisers contend that it is manufacturers rather than small retailers who are the true beneficiaries of price maintenance since the policy assures them broad distribution and reduces the possibility of interbrand price rivalry [11, pp. 216–218]. That the opposition to repeal was led by such firms as the Magnavox Company, Simmons Company, U.S. Pioneer Electronics Corp., and Schwinn Bicycle Company speaks to this point.

Opponents of fair trade point out that the policy has cost consumers dearly. A number of studies are mutually consistent in their conclusion that maintained prices are from 16 to 19 percent higher than competitively determined prices in states that do not enforce fair trade laws [11, p. 174]. On the basis of such information, the Council of Economic Advisors in 1969 established the costs of fair trade to consumers at $1.5 billion annually. In a more detailed 1973 study by the Library of Congress, the cost was set at between $1.66 billion and $6.23 billion depending upon the assumed proportion of retail transactions in fair trade products [11, p. 330]. Accordingly, families in fair trade states may have paid as much as $150 per year more due to maintained prices.

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 consumer 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. Sherer,

> 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. [11, p. 171; 7, p. 515]

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 that might emerge in the long run. Instead, repeal of fair trade could be expected to serve the public interest by making consumer prices more nearly approximate competitive levels.

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 demanded by consumers 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 [9, pp. 149–154; 2, p. 209; and 12, pp. 425–436]. This type of competitive behavior is most conspicuous in industries like bank-

ing, airlines and stock brokerage where rates have been absolutely fixed by regulatory fiat or private conspiracy [3; 8]. In retail markets where prices are fixed by fair trade, firms can be expected to attempt to attract customers through more sales staff, personal attention, free delivery, extended hours of business, and conveniently located outlets than consumers would willingly pay for were prices not vertically fixed. Theory therefore suggests that the repeal of fair trade would alter the conduct of retail trade by reducing nonprice competition to a level more in line with consumer preferences.

Finally, theory indicates that fair trade can affect the structure of retailing. By guaranteeing sellers 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 [11, p. 51]. 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 encourage inefficiency with consumers, once again, paying the price.

THE EMPIRICAL EVIDENCE

Economic theory clearly implies that fair trade has the potential of increasing retail prices, service competition and number of stores. Accordingly, its repeal in 1976 would be expected to have reduced prices, diminished nonprice competition and caused a consolidation among retailers. These three economic hypotheses are tested below using data drawn from fair trade and free trade states for the eighteen month period following repeal, January 1976 to June 1977. 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.

The Effect of Repeal on Consumer Prices

Analysis of the influence of fair trade 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 prod-

ucts are covered by price maintenance covenants. 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 in the 17 Standard Metropolitan Statistical Areas lying in fair trade states than for SMSA's in free trade areas.

As Table 1 indicates, in the first two 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 predicted 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 200 such products were gathered during the first two weeks in December 1975 and again in December 1976 one year after repeal. The one year follow-up period was chosen rather than a shorter period since certain fair trade products are subject to seasonal manufacturer-sponsored price reductions. This had the disadvantage however, that observed price changes might in part reflect changes in the cost of living and consumer preference as well as repeal.[3] A wide variety of chain and independent, discount and nondiscount, and specialty and multi-line stores in Sacramento, California were included. A questionnaire about retailer attitudes toward fair trade accompanied the price survey. A total of 62 stores replied, representing a 48 percent response rate. Forty-seven of the 200 products in the original sample had to be eliminated due to model changes and non-response.

Average price changes for the sample were compared with national CPI

[3]A study in progress at the University of California, Davis reveals that subsequent to the suspension of legally specified minimum milk prices in California the most significant price reductions occurred within seven months.

TABLE 1
Mean Percent Changes in CPI Components, United States (December 1975 to February 1976).[1]

CPI Component	Mean Percent Change in CPI Component: SMSA's in Free Trade States	SMSA's in Fair Trade States	Difference	Standard Error of Difference	t Statistic
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

[1]Source: U.S. Bureau of Labor Statistics, *CPI Detailed Report*, February 1976.
*Significant at the .05 level.

changes during the 12 month period (Table 2). Despite the fact that the overall rate of inflation estimated for 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 risen less rapidly than the corresponding CPI components. That is, in all groups except dinnerware,[4] prices rose less rapidly for products in the fair trade sample than for products in the CPI sample which was dominated by items that were not fair traded. Differences were most pronounced for toilet goods, watches, and television sets. 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 are not inconsistent with previous estimates of the cost of fair trade. The average price change noted for fair trade goods, 2 percent, was 7 percent smaller than the concurrent change in the national CPI. This translates to $1 and $2 billion in savings for consumers under the assumption that 4 to 6 percent of all products are fair traded.

[4]This may, in part, be explained by Pickering's model for prediction of the likely consequences of abolishing price maintenance for different types of products. One of his conclusions is that where cross elasticities between retailers are low and market demand is somewhat elastic, price reductions can be beneficial to both manufacturers and distributors, a situation that could explain the coefficient for dinnerware.

TABLE 2
Percent Changes in CPI Components and Sample Prices (December 1975 to December 1976).

Product Group	Change in U.S. CPI Component[1]	Mean Price Change–Sample	Difference	Standard Error of of Difference	t Statistic	Number of Observations in Sample	Number of Different Brands Priced in Sample
Furniture and Bedding	+3.2%	+ 2.5%	+ 0.7%	0.49	1.43	124	10
Toilet Goods	+5.4%	− 1.4%	+ 6.8%*	1.15	5.91	166	11
Apparel	+4.5%	+3.9%	+ 0.6	1.00	0.60	110	12
Appliances	+4.6%	+ 1.2%	+ 3.4*	0.82	4.15	86	6
Dinnerware	+7.9%	+10.0%	− 2.1*	1.03	2.03	124	7
Wristwatches	+2.3%	− 1.4%	+ 3.7*	1.69	2.18	56	4
Television Sets	+0.1%	−11.6%	+11.7*	1.34	8.55	28	3

[1]Source: U.S. Bureau of Labor Statistics, *CPI Detailed Report,* December 1976, p. 22.
*Significant at the .05 level.

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

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

was estimated using ordinary least squares for the j^{th} fair trade product in the i^{th} product group.[5] Variable ΔP^{ij} represented the percent change in price between that charged in December 1976 and the uniform 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 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. Accordingly, multicollinearity appears not to have been a problem.

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 3). Rather, the positive values of the β_1 coefficients illustrate that chain stores *increased* the prices of toiletries, apparel, 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

[5]The equivalence of analysis of the variance and regression on dichotomous variables is discussed in [14, pp. 77–80].

TABLE 3
Analysis of Variance for Fair Trade Price Sample.

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

*Significant at the .025 level. †Significant at the .10 level.
Parenthetical figures represent standard errors.

indicated 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 sample data indicate that chain store prices were consistently lower than independents only for wristwatches.

The sample also provides little support for the contention that in the absence of fair trade, multi-line stores would underprice specialty stores. This was only the case for toilet goods where the average price change was 11.07 percentage points greater 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 undercut the prices of multi-line stores on fair trade items by seven percent. In most cases, however, the pricing of specialty and multi-line shops did not differ significantly. This observation from the price data is in harmony with responses from the retailer questionnaires: the proportion

of store managers who indicated that they had significantly lowered prices in response to repeal, about 25 percent, was the same for specialty store and multi-line store respondents.

As was anticipated by proponents of 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 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 has the opposite effect. However, the retailer survey indicates that price cutting was not pervasive after repeal. Fully two-thirds of all respondents stated that they had not changed their pricing policies and somewhat more than one-third of those questioned detected little or no reaction to repeal on the part of their competitors. Those store managers who noted a reaction among their competitors most frequently stated that prices had been reduced by local discount houses.

Nonprice Competition

While somewhat less compelling than the evidence on prices, other data obtained from retailers indicate that moving towards greater price competition at the retail level has somewhat diminished nonprice competition in the form of promotion, inventories, and customer services. For example, 15 percent of surveyed retailers noted that they or their rivals had reduced their advertising budgets after repeal. Managers of nondiscount specialty stores also mentioned that they have discontinued certain product lines sold at nearby discount outlets. Respondents indicated broad

agreement that lower prices forced retailers to cut back services to a level the market supports since "in the long run, consumers only get what they pay for."

More detailed evidence is provided by Table 4 which reports average advertising linage purchased by retailers in the major newspaper in each of the 108 largest cities in the U.S.[6] In accordance with economic theory, in 1975 the mean level of advertising in each paper in the 82 fair trade areas, 28.97 million lines, exceeded the mean figure for papers in the free trade cities, 24.93 million lines. The 16 percent difference is statistically significant at the .025 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.

Another nonprice competition variable, number of employees engaged in retail sales, increased by an average rate of 2.94 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 and nonprice competition are substitutes. Note that growth of the retail work force was especially slow in states which prior to 1976 had enforced nonsignor clauses compelling all retailers to respect fair trade agreements. There is evidence, then, that retailers adjusted to the lower prices associated with repeal by offering consumers less advertising, fewer product lines, and fewer sales personnel.

Market Structure

By fixing markups at abnormally high levels, it is argued that 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 Munroe

[6]The sample consisted of cities included in [10] for which 1975 and 1976 linage figures were available.

TABLE 4
Indicators of Nonprice Competition in Free Trade and Fair Trade Jurisdictions[1].

		Fair Trade							
	Free Trade	Without Nonsigner Clause	With Nonsigner Clause	Total	Difference Fair Trade vs. Free Trade	Standard Error	t	N	Unit
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

[1]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.

*Significant at the .05 level.

†Significant at the .10 level.

TABLE 5
Mean Indicators of Changing Market Structure Among Retailers in Free Trade and Fair Trade Jurisdictions.[1]

	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

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

*Significant at the .05 level.

†Significant at the .10 level.

Lee's well publicized findings [3] covering the period 1933 to 1958, Table 5 reveals that commercial bankruptcies per 100,000 population were significantly higher in fair trade states immediately 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. Although the proportion of this increase originating in the retailing sector cannot be determined using available data, it is noteworthy that business failures rose 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. In the retailer survey discussed above, almost half of the retailers commented that small stores in their area—especially independent, service-oriented outlets—had suffered loss of market share or lower profits. One-fourth of the respondents further said that discounters had benefited from repeal. However, at least 60 percent of the store managers expressed a preference *not* to have fair trade reinstated. This result was generally true across all types and sizes of stores.[7] The data in the last line of Table 5 illustrate that between 1975

[7]Even the managers of small independent stores who claimed to have been injured by repeal frequently opposed reinstatement of fair trade, citing poor enforcement of fair trade agreements by manufacturers and the broader benefits of an unfettered market.

TABLE 6
U.S. Retail Failures by Size of Liability (1975-1976).[1]

Size of Liabilities	1975		1976	
	Number	Percent	Number	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

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

and 1976 large multi-line stores increased in number nationwide and that the rate of increase was more rapid in fair trade 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 not be fully revealed in the 1976 data.[8] Nationally, there appears to have been minor change in the distribution of retailer bankruptcies across liability categories during the year following repeal (Table 6). Because these categories correspond approximately to store size, there is little evidence 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 no evidence, however, that the pricing policies of chain stores or multi-line stores have become more aggressive on fair trade items since repeal.

Repeal of fair trade appears to have resulted in a reduction of nonprice competition. While previously competition among retailers through newspaper advertising was more intensive in fair trade states, since repeal

[8]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.

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.

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 concentration of failures in any particular size category can be detected.

This paper represents the first part of a continuing study of how consumers and retailers have been affected by the repeal of the Miller-Tydings and McGuire Acts. In the second half of the study, the price data analyzed above by product group will be investigated by manufacturer in conjunction with antitrust authorities to discern whether alternative means are being employed by some producers to enforce manufacturer-specified retail prices. Final conclusions as to the impact of repealing fair trade laws must await the completion of that research.

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