

# WATCH-SMUGGLING ACT

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## HEARING

BEFORE A

### SUBCOMMITTEE OF THE COMMITTEE ON FINANCE UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

## S. 3287

TO PROVIDE FOR THE LICENSING OF IMPORTERS OF  
WATCHES, WATCH MOVEMENTS, AND WATCH  
PARTS, TO PROTECT THE REVENUE,  
AND FOR OTHER PURPOSES

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AUGUST 1, 1935

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# WATCH-SMUGGLING ACT

THURSDAY, AUGUST 1, 1935

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,  
Washington, D. C.

The subcommittee met, pursuant to call, at 2 p. m., in the committee room of the Committee on Education and Labor, Capitol Building, Senator David I. Walsh presiding.

Present: Senators Walsh (chairman), Gerry, and Metcalf.

Senator WALSH. The committee will come to order, please.

The subcommittee of the Finance Committee has before it S. 3287 for hearing. S. 3287 is a bill to provide for the licensing of importers of watches, watch movements, and watch parts, to protect the revenue, and for other purposes.

The bill will be made a part of the record at this point.

[S. 3287, 74th Cong., 1st sess.]

A BILL To provide for the licensing of importers of watches, watch movements, and watch parts, to protect the revenue, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when used in this Act unless the context otherwise requires:

(a) The term "person" includes individuals, partnerships, associations, joint-stock associations, and corporations.

(b) The term "license" and "licensee" mean respectively any license issued under this Act, and any person licensed under this Act.

(c) The term "watches, watch movements, and watch parts" means watches, watch movements, and watch parts as described in subsections (a) and (c) of paragraph 367 of schedule 3 of Title I of the Tariff Act of 1930: *Provided*, That, notwithstanding the foregoing, the term shall not include any watches admitted free of duty into the United States under any provision of law.

(d) The term "United States" when used in a geographical sense, includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, the Canal Zone, American Samoa, and the Island of Guam.

SEC. 2. (a) After ninety days after the enactment of this Act, no person shall, except by special permit which may be issued in his discretion by a collector of customs under such conditions as the Secretary of the Treasury may prescribe, import into the United States any watches, watch movements, or watch parts who has not been licensed for that purpose by the Secretary of the Treasury pursuant to such rules and regulations as he may prescribe. A fee of such amount as the Secretary of the Treasury may deem necessary to provide for the administrative costs of issuing such license, but not more than \$100, shall be paid by the licensee. All merchandise subject to the provisions of this Act shall be entered at such ports of entry as shall be designated by the Secretary of the Treasury. The Secretary of the Treasury shall furnish to the collectors of customs at such designated ports current lists of the names and addresses of all licensees together with the distinguishing mark or symbol assigned for the use of such licensees under section 4 of this Act.

(b) Licenses issued under this Act shall not be transferable and shall remain in effect for one year from date of issuance, unless sooner suspended or revoked by the Secretary of the Treasury.

SEC. 3. No license shall be issued under this Act to any person who (a) has been convicted of violation of the customs laws, (b) is under indictment for violation of the customs laws, (c) fails or refuses to comply with the provisions of this Act or any rules or regulations issued hereunder, or (d) fails to file the voluntary inventory provided for by section 7 of this Act: *Provided*, That a license may be issued at any time within one hundred and fifty days after the enactment of this Act, subject to revocation if the licensee fails to file such inventory within such period of one hundred and fifty days. The Secretary of the Treasury may, after due notice and opportunity for a hearing, suspend or revoke the license of any licensee who fails or refuses to comply with the provisions of this Act or any rules or regulations issued hereunder. The Secretary of the Treasury shall suspend the license of any licensee who is under indictment for violation of the customs laws, and upon conviction of any person for violation of the customs laws shall revoke such license. It shall be unlawful for any person forbidden by or under authority of this Act or any regulations issued hereunder from obtaining or holding a license to employ any licensee as officer, agent, or employee or to be an officer, agent, or employee of any licensee.

SEC. 4. After ninety days after the enactment of this Act, all watches and watch movements, whether complete or incomplete, having more than one jewel, or having one jewel, and one or more bouchons or bushings, and all pillar plates and top bridges if imported separately, which are imported into the United States must, unless imported under the special permit authorized by section 2 (a) of this Act, in addition to any other marking required by law, be permanently marked with a distinguishing mark or symbol, in such place and manner and pursuant to such rules and regulations as the Secretary of the Treasury may prescribe, which mark or symbol must be marked on such watches, watch movements, and watch parts in the country of manufacture. The Secretary of the Treasury shall approve and assign for the use of licensees the distinguishing marks or symbols required by this section. No such mark or symbol shall be approved or assigned for the use of more than one licensee.

SEC. 5. If any person importing watches, watch movements, or watch parts into the United States, or dealing in imported merchandise of such character, or purchasing imported merchandise of such character at a Government sale, fails, at the request of the Secretary of the Treasury or a collector of customs as the case may be, to permit a duly accredited officer of the United States to inspect his stock or books, papers, records, accounts, documents, or correspondence pertaining to such merchandise or the purchase or importation thereof, then such person shall be subject to a penalty of not more than \$1,000 and, while such failure continues, the Secretary of the Treasury, under regulations prescribed by him, (1) shall prohibit the importation of merchandise into the United States by or for the account of such person and (2) shall instruct the collectors of customs to withhold the delivery of merchandise imported by or for the account of such person. If such failure continues for a period of one year from the date of such instructions, the collector shall cause the merchandise, unless previously exported, to be sold at public auction as in the case of merchandise forfeited under the customs laws.

SEC. 6. Any watch, watch movement, or watch part imported into the United States in violation of any provision of this Act or any rule or regulation issued hereunder shall be seized and forfeited in the same manner as forfeitures incurred for violation of the customs laws.

SEC. 7. Within one hundred and fifty days after the enactment of this Act any importer, wholesaler, or retailer of watches, watch movements, or watch parts may voluntarily file with the collector of customs in the district in which such importer, wholesaler, or retailer is operating an inventory of all watches and watch movements, whether complete or incomplete, having more than one jewel, or having one jewel and one or more bouchons or bushings, and all pillar plates and top bridges if imported separately, on hand on the ninetieth day after the enactment of this Act, which were imported into the United States prior to ninety days after the enactment of this Act. If any such watch, watch movement, or watch part be not marked pursuant to section 4 of this Act, and if with respect to any such watch, watch movement, or watch part no voluntary inventory has been filed pursuant to

this section, this shall be prima-facie evidence in any administrative or judicial proceeding for the forfeiture of such watch, watch movement, or watch part under the provisions of this Act or any provision of the customs laws, that such watch, watch movement, or watch part was in fact unlawfully imported into the United States.

SEC. 8. In addition to the specific powers conferred by this Act, the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 9. If any clause, sentence, or part of this Act, or the application thereof to any person or circumstances, is held invalid, the application thereof to other persons, or circumstances, and the remainder of the Act, shall not be affected thereby.

SEC. 10. This Act may be cited as the "Watch Smuggling Act"

Is there a representative of the Treasury Department here?

Mr. C. M. HESTER. Yes, sir.

### STATEMENT OF C. M. HESTER, ASSISTANT GENERAL COUNSEL, TREASURY DEPARTMENT

Senator WALSH. What is your official position?

Mr. HESTER. I am Assistant General Counsel of the Treasury Department.

Senator WALSH. Did you assist in the preparation of this bill?

Mr. HESTER. Yes; I did.

Senator WALSH. Under whose direction?

Mr. HESTER. Under the direction of the general counsel of the Treasury Department.

Senator WALSH. Did you testify before the House Ways and Means Committee or a subcommittee of the Ways and Means Committee in reference to this measure on Tuesday night?

Mr. HESTER. Yes; I offered some testimony in connection with it.

Senator WALSH. Who else appeared and discussed this bill?

Mr. HESTER. There were several representatives of the industry and—

Senator WALSH (interposing). Who else representing the Government?

Mr. HESTER. Mr. Spingarn, Mr. Horrow, and Mr. Murphy.

Senator WALSH. Was the Government's position with regard to the measure fully gone into and discussed?

Mr. HESTER. It was not discussed at any great length for the reason that the Chairman of the Ways and Means Subcommittee which has this bill in hand, requested the Secretary of the Treasury to make a report on the bill, that is, as to the attitude of the Treasury Department on the bill, and the Secretary made a report to that committee, recommending that the bill be enacted into law. I have a copy of that report here, which I will be glad to present to you.

Senator WALSH. You mean a copy of the Secretary's letter?

Mr. HESTER. Yes.

Senator WALSH. That may be presented and put into the record.  
(The letter referred to is as follows:)

JULY 26, 1935.

HON. ROBERT L. DOUGHTON,  
*Committee on Ways and Means,*  
*House of Representatives.*

MY DEAR MR. CHAIRMAN: I am in receipt of a letter of July 23, 1935, from Representative McCormack, chairman of your Subcommittee on Customs Service and Smuggling, enclosing a copy of H. R. 8921 and requesting advice as to the position of this Department with reference to the proposed legislation.

The bill provides for the licensing by the Secretary of the Treasury, under prescribed conditions, of importers of watches, watch movements, or watch parts, and for supervision to a limited extent over their activities. It also provides that all watches and watch movements containing more than one jewel, or containing one jewel and one or more bouchons, and all separately imported pillar plates and top bridges imported into this country after the effective date of this act, must, unless brought in under a special permit, be marked in the country of manufacture with a distinguishing mark or symbol. Each imported is to be assigned a separate mark or symbol by the Secretary of the Treasury which will be placed on all watches, etc., imported by him. With respect to watches, etc., imported into this country prior to the effective date of this act, a voluntary inventory may be filed by any importer, wholesaler, or retailer of watches, etc., with the collector of customs in the district in which he is doing business. If, with respect to any watch, no such voluntary inventory is filed, and if such watch does not have the distinguishing mark or symbol prescribed by the bill, this shall be prima facie evidence in any proceeding looking to the forfeiture of the watch, etc., that it was unlawfully imported into the country.

It is the considered judgment of this Department that the provisions of H. R. 8921 will provide an effective deterrent to the watch smuggling traffic which in recent years has assumed such vast proportions as to constitute a real menace to domestic manufacturers and legitimate importers and to the customs revenue of the United States. I believe that the two principal features of the bill: (1) The provisions for licensing importers and supervising their activities, and (2) the marking requirements with respect to imported watches, etc., which will permit legitimate imports to be distinguished in the trade and by Government agents, from watches, etc., that have been smuggled, will prove a satisfactory solution of a problem which I know has been a source of great concern both to yourself and to the Treasury Department.

Very truly yours,

STEPHEN B. GIBBONS,  
*Acting Secretary of the Treasury.*

Senator WALSH. At that hearing on Tuesday night, were there objections made?

Mr. HESTER. Yes.

Senator WALSH. Were any objections made to the bill itself, or were the objections confined to the provisions of the bill?

Mr. HESTER. The objections were made both to the bill itself and to some of the provisions of the bill.

Senator WALSH. Have you a record of those objections, or do you recall them?

Mr. HESTER. I have not them verbatim, but I can recall them. One objection was that there was no appeal provided for from the order of the Secretary of the Treasury suspending or revoking a license of an importer.

Senator WALSH. Is there not a provision under general law that governs that?

Mr. HESTER. Aside from any express authority, the importer would have the right to proceed by injunction, in the Supreme Court of the District of Columbia against the Secretary of the Treasury, or in the District Court of the United States against the collector to restrain the Secretary from revoking his license, and in such proceedings the court would inquire into whether or not the Secretary was acting in accordance with the statute or was acting arbitrarily or capriciously.

However, it was suggested at the hearing the other evening that the importer should have the right to a judicial review in the district courts of the United States on questions of law.

We have considered that in the Treasury Department and we have not any objection at all to such a proceeding, in fact, a similar



proceeding is provided for under section 5, title 2, of the National Prohibition Act of October 28, 1919, which is now embodied in section 14 of title 27 of the United States Code. That proceeding was found to be very satisfactory, and the practice under that proceeding is very well settled. (In this connection see *Ma-King Co. v. Blair*, 271 U. S. 479 (1926)).

Under that proceeding, the permittee, that is, the person who obtains a permit to manufacture industrial alcohol, if the Secretary revoked his permit or suspended it, had a right to have a judicial review in the district court on questions of law, and we are satisfied with it.

Senator WALSH. Will you prepare an amendment that we might incorporate in this bill? That takes care of one objection.

Mr. HESTER. Yes, sir.

Senator WALSH. What was the next objection?

Mr. HESTER. The next objection was the provision of the bill which authorized the Secretary of the Treasury to suspend the license of an importer who was under indictment. So far as the Treasury Department is concerned, we are perfectly willing to have that stricken from the bill.

Senator WALSH. That takes care of that objection?

Mr. HESTER. Yes.

Senator WALSH. What is the next objection?

Mr. HESTER. There was another objection. The bill provides that all watches brought into the United States after the time when the act becomes effective, which is 90 days after the enactment of the act, must be marked.

Senator WALSH. So the foreign shipper would have only 90 days to prepare to mark his watches?

Mr. HESTER. The suggestion was made by the assemblers or the representatives of the importers, that the period should be a year. I think that domestic watch manufacturers expressed a view that 6 months would be a sufficient time. I believe that that matter is a question of policy for the committee. So far as the Treasury Department is concerned, we would be very glad to defer to the judgment of the committee in the matter.

Those are the three principal objections.

Senator GERRY. Was there an objection to the whole bill? The whole plan of the bill?

Mr. HESTER. I believe that there was.

Mr. BEVANS. I made such an objection representing the National Council of American Importers and Traders of New York to the whole bill.

Senator WALSH. You will be heard shortly.

Mr. BEVANS. Thank you.

Senator GERRY. Is there any provision in this bill in regard to the license, that they have to give notice before they revoke it, by the Treasury?

Mr. HESTER. There is not any express provision for judicial review in the bill.

Senator GERRY. Why should there not be such a provision?

Mr. HESTER. Under the due process clause, they would be entitled to that. However, that is another thing which we have considered and we have prepared a provision which reinstates those provisions.

We do not think it is necessary, however, to reinstate them; they have that right any way.

Senator GERRY. You would have it definite if you put it in the bill.

Mr. HESTER. That is perfectly satisfactory to the Treasury Department.

Senator GERRY. I don't know; I am just asking these questions. I want to ask another question. Is there a special reason why there should be a license here other than any other articles that come in? Why should there be a special license provision here?

Senator WALSH. Is the Senator familiar with the reports in regard to the extent of the smuggling?

Senator GERRY. No; I am not.

Senator WALSH. There is extensive information available, and there was a report made on previous bills reported last year showing that this is the most extensive and widespread smuggling that takes place in this country. I am trying to shorten the matter.

Senator GERRY. If you have the reports, all right.

Senator WALSH. All right. State briefly how much of a problem this is?

Mr. HESTER. There is a tremendous racket in the United States in the smuggling in of Swiss watch movements, and after careful consideration and study of the matter over a considerable course of time, this idea was conceived as the best method that could be devised to stop this practice.

Senator WALSH. Will you explain to us what the method is? It is imported, and what is done to the parts after they are brought in, and the watches put in competition with the domestic products?

Mr. HESTER. I should like Mr. Spingarn to answer that question, sir, if you will allow him.

Senator WALSH. Certainly.

#### STATEMENT OF STEPHEN J. SPINGARN, ATTORNEY, TREASURY DEPARTMENT

Senator WALSH. What is your position?

Mr. SPINGARN. Attorney in the office of the General Counsel of the Treasury Department.

Senator WALSH. Will you make a statement on this point, Mr. Spingarn?

Mr. SPINGARN. The principal provisions of the bill designed to restrict smuggling are these: It provides that all watches and watch movements having more than one jewel or one jewel and one or more bouchons and all separately imported pillar plates and top bridges (which are watch parts) which are brought into this country after the effective date of the act, must, with certain specified exceptions, be marked in the country of manufacture with a distinguishing mark or symbol. All importers of watches, watch movements, and parts are required to be licensed under regulations prescribed by the Secretary of the Treasury.

Each importer is to be assigned a distinguishing mark or symbol which must be on all watches imported by him. As to watches and movements already in the country when the act goes into effect, there is a provision that a voluntary inventory of them may be filed with

collectors of customs. This is not compulsory, but the failure to do so with respect to any watch or movement will raise the rebuttable presumption in forfeiture proceedings that that watch or movement was unlawfully brought into the country.

Senator WALSH. Will you explain the methods of smuggling and the extent to which it has been carried on?

Mr. SPINGARN. The smuggling traffic in watch movements has grown up chiefly in the last 12 or 15 years. It has assumed tremendous proportions. The report on H. R. 8624, a previous watch-smuggling bill, indicates that as much as half a million watch movements were smuggled into the country in 1932.

Senator WALSH. Just what is done? Just what is the method pursued? How do they operate?

Mr. SPINGARN. A good example of that is the recent case in New York, in which watch movements were smuggled in by a ship's baker on a big foreign liner. He had several thousand movements which he brought in by means of a specially prepared vest. The vest could contain six or seven hundred movements at a time. In fact, I remember that he was apprehended, he was very glad to be relieved of the vest, because it decreased his normal girth of 44 inches to 31. He carried all of these movements in the vest.

Movements are also smuggled in chocolate bars, pottery, and by a number of other methods.

Senator WALSH. Have there been some prosecutions?

Mr. HESTER. There have been in the past. There have been prosecutions and convictions.

Senator WALSH. When these parts come in, how are they assembled for the purpose of the finished product and ready for the domestic market?

Mr. HESTER. Senator, I think we had better defer to the judgment of those who are skilled technicians. I think the domestic watch manufacturers and assemblers could explain that better than we can.

Senator WALSH. Yes; I think they are quite familiar with that.

Now, Senator, are there any more questions on this phase of the matter?

Senator GERRY. No.

Senator WALSH. We will be pleased to hear from anybody who has asked to appear in opposition to the principle of the bill.

#### STATEMENT OF JAMES W. BEVANS, REPRESENTING THE NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS, INC., NEW YORK, N. Y.

Senator WALSH. Where do you reside, Mr. Bevans?

Mr. BEVANS. Hackensack, N. J. I am in business in New York practicing customs law. I am an attorney and customs adviser for the National Council of American Importers & Traders, Inc. That is located in New York and has a membership of 100, including the leading import houses and houses in the United States dealing in part in imported merchandise.

We are approaching this bill and the question of policy in dealing with our international trade. We feel rather apprehensive of the delegation of authority to an administrative officer to control the

import of any commodity by a licensing system. It would seem to be an innovation in our customs legislation.

As far as I know, we have never done it before, dating away back in 1789. We feel that this would be in effect a customs barrier, it would be the erection of a customs barrier, and for that reason.

This proposed legislation contemplates the entire control of the imports in watches and watch movements by the Secretary of the Treasury. He has to make rules and regulations; he has to provide symbols with which the movements are to be marked, and naturally there will be many, many questions to be decided. The rules and regulations will naturally be very complex and very extensive.

Senator WALSH. How many persons import watches and watch parts?

Mr. BEVANS. Between 75 and 100.

Senator WALSH. Are they practically all in New York City?

Mr. BEVANS. The greater portion of them.

Senator WALSH. Can you give us the names of these individuals for the record?

Mr. BEVANS. I will be glad to, later on.

The Treasury Department would be called upon to make many, many interpretations and many, many decisions, and those decisions, in the natural method of handling business in the Treasury Department, would probably not be rendered for within periods of 3 to 6 months.

It places the legitimate importer in the position where he is subject to any regulation of the Treasury Department, where he is subject to interpretations of those regulations, where he is subject to decisions on one hundred and one different things, and that is surely going to create delay, it is surely going to create an additional hazard in importing.

As I say, we are very apprehensive of Congress departing from its old policy and providing for the import of any line of merchandise under a license, administered by an administrative officer.

There is no judicial review provided in this bill. Mr. Hester has referred to the District Court. That would not be for the importer a very satisfactory tribunal in which to review the decisions of the Treasury Department as to imports.

Senator WALSH. Do not all broker importers have to have a license?

Mr. BEVANS. No.

Senator WALSH. Do they not have to have permits from the Treasury Department?

Mr. BEVANS. No.

Senator WALSH. There is no requirement of any kind?

Mr. BEVANS. None whatever.

Mr. HESTER. The Senator has reference to customhouse brokers.

Mr. BEVANS. Yes; a customhouse broker in order to transact business must have a license, and that is in order to provide an intelligent and reputable assistance to importers in passing their entries through the customhouse.

Senator WALSH. So that the customhouse brokers who handle watch parts now have to have a license?

Mr. BEVANS. They now have to have a license.

Senator WALSH. And they all have to have licenses to do business?

Mr. BEVANS. Yes; but that is very greatly different from a license to import merchandise.

Senator WALSH. But they have to?

Mr. BEVANS. Yes, sir.

Senator WALSH. But that license can be taken away from them?

Mr. BEVANS. Yes.

Senator WALSH. And they can be revoked in the event that evidence is presented that they have been participating in any smuggling?

Mr. BEVANS. Yes, sir.

Senator WALSH. Or committed any fraud?

Mr. BEVANS. In the act of 1930, section 641, you have very carefully provided that in order to revoke or suspend that license, the Secretary of the Treasury must file a detailed complaint and give the broker an opportunity of hearing, with his attorney, and then an appeal to the United States Customs Court; and if that appeal is taken, it stays the suspension.

Just take what would happen under this act. It says that the importer's license might be revoked if he fails or refuses to comply with the rules and regulations made by the Secretary of the Treasury. Of course, we must assume that the Secretary of the Treasury is going to make reasonable rules and regulations.

Senator WALSH. Of course, the license would only be revoked for this purpose, importing watches and watch parts.

Mr. BEVANS. Yes.

Senator WALSH. He could import anything else he wanted; but if evidence was obtained that he was violating the smuggling laws, why should his license not be revoked?

Mr. BEVANS. It should be revoked, but the license may be revoked—let me read you the provision of the bill:

SEC. 3. No license shall be issued under this act to any person who (a) has been convicted of violation of the customs laws—

And among other things who—

falls to refuse to comply with the provisions of this act or any rules or regulations issued hereunder.

These gentlemen who are interested in this particular line of merchandise are watch assemblers. It does not benefit them any. If their license is revoked to import watch movements, they may import something else.

What I am getting at is that these regulations which will be issued are presumed to be reasonable, but who is to judge of that without any judicial review as to whether they are reasonable or not?

I have known many regulations issued by administrative officials that were wholly unreasonable and were so held by the court. You gentlemen have set up a tribunal to deal with customs matters, the United States Customs Court, the United States Court for Customs and Patent Appeals.

If there is to be any review of the Secretary's decision in licensing the importer of merchandise, why should it not go to that court and be left there? Why in the district court? It will take 2 years or more in the district court to get a decision; and further, the district courts are located all over the United States, and it would mean that an importer of watch movements located in the West would go

into a district court in that jurisdiction, while an importer of watch movements in the East would go into a court, perhaps, for the southern district of New York, and they are bound to have conflicting decisions.

Senator WALSH. What court do you suggest?

Mr. BEVANS. The United States Customs Court.

Senator WALSH. I think the Treasury Department suggested the district court because that is the provision in the prohibition law.

Mr. HESTER. That is right. And if I may offer this suggestion, it is a court of general jurisdiction; it is a court that deals with criminal offenses. It is the court which is wholly cognizant with the evidence necessary to support convictions for criminal offenses, whereas the customs court is a court of limited jurisdiction.

Mr. BEVANS. Its jurisdiction is so comprehensive that under the statute it is given the power to decide cases where the collector of customs has withheld merchandise or refused to accept entry. As a matter of fact, it is a question whether that language is not broad enough to give that court jurisdiction if the Secretary, acting under this legislation, should refuse to deliver merchandise, because the importer's license was revoked; but it should be made definite, and there is no court in the United States which has had the long experience and contact with customs matters in all of its various phases than the United States Customs Court.

Senator WALSH. The committee will be glad to consider that suggestion in case we reach the matter of reporting the bill. Are you in accord with the complainants here, the petitioners, and with the Treasury Department, that there has been extensive and wide-spread smuggling of watches and watch parts into this country?

Mr. BEVANS. Only to this extent, Senator: I have taken the hearings and the figures that have been stated at those hearings, and I am not in accord purely upon the consideration of those figures. They state in one of the hearings that a million movements have been smuggled annually. They are taking the year 1932.

Senator WALSH. This report of the House Committee on Ways and Means, Report No. 1411, Seventy-fourth Congress, first session, says:

Evidence before your committee shows the domestic jeweled-watch industry has an invested capital of approximately \$30,000,000, and annually employ about 10,000 workers, mostly highly skilled, with an annual productive capacity of approximately 3,500,000 movements.

The economic decline in this industry has been serious, especially in the past few years. At one time there were some 60 companies engaged in the manufacture of jeweled watches in the United States. In 1927 this number had been reduced to 10 and in 1932 was further reduced to 3.

Further it states:

In 1932 the estimated American consumption was 1,935,000. The 1932 domestic production was 434,941 jeweled movements, and the legitimate duty-paid imports were 433,180 movement, or a total of 868,121. Deducting the legitimate imports and the domestic production from the 1932 estimated American consumption leaves approximately 1,000,000 watch movements unaccounted for, and of this number it is conservatively estimated that not less than 500,000 were smuggled or fraudulently introduced into the commerce of the United States in the year 1932.

I simply want to call your attention to the House report from which I have just quoted.

Mr. BEVANS. Senator, you see from those figures that the quantity estimated to be smuggled in 1932 is based upon an estimated demand or consumption in the United States. That is purely an estimate.

Take the figures 433,180 jeweled watch movements imported, on which the duty was paid, and a million, or taking 500,000 off, that reduces it to the number smuggled.

That is inconceivable that these gentlemen who are importing their watches and paying duty that ranges in equivalent ad valorem rates as high as 180 percent could possibly be in business if a greater number of watch movements were so imported and sold in the United States at a price so much lower than the price they must necessarily charge, because the duty has been paid—500,000 against 400,000.

Senator WALSH. Is it not a fact that the Government has seized such a large number of these watch movements that have been smuggled that domestic manufacturers have sought to prevent the Government from selling them as seized goods so as to put them in competition with the domestic producers?

Mr. BEVANS. I believe that is true.

Senator WALSH. So we do know from the Government's own figures themselves that they have been able to estimate that large numbers of these parts are being smuggled; is that not true?

Mr. BEVANS. According to the figures given in that same report, I think, there were 91,000 seized in a period of over 3 years, and I think the statement is made that the Treasury Department estimates that they only seized 15 percent of those smuggled.

Senator METCALF. Where do they get those figures?

Mr. BEVANS. I think that was stated in the same report the Senator was reading from. If that is true, if 30,000 in a year constitute 15 per cent, you can see that the number would not be anywhere near approximately 500,000. It would be about 175,000 smuggled. While that is a goodly number perhaps in itself, it is certainly far less than any ideas of a million or five hundred thousand, and, personally, having been connected with the customs service for about 14 years here in Washington, I have such a high idea of the efficiency of the force that we have for the protection and prevention of smuggling that I would not want to admit that they only detected and seized 15 percent of the movements that were smuggled.

But, speaking for the National Council, we are concerned more today in this new policy of licensing imports. We think it is a serious matter to an importer to commit to an administrative department the broad powers that this legislation will give to the Treasury Department in the licensing of any imports.

If there is a problem presented here with respect to the smuggling of watches, we think that some effort ought to be made to solve it in some other way than by this innovation, which we think is filled with danger to our international trade.

Senator METCALF. Are there any other business men licensed to purchase things abroad, or is this the first?

Mr. BEVANS. I don't know of any. The nearest situation that we could have had to this would have been the case of liquors during prohibition, but there we had a different picture, because alcoholic beverages were prohibited. There was a narrow limited use for

medicinal purposes, and there the Government in order to stop the manufacture and sale in the United States, naturally had to extend it to imports, so they provided a permit system here for imports and they had certain inscriptions and license numbers and so forth placed upon legitimate liquor, and they spent millions of dollars and used thousands of men in trying to stop this smuggling. We had a fleet that sailed away out to the 12-mile limit and sometimes beyond that, and we did not succeed very seriously in stopping the smuggling. I don't know whether we would have any different situation under this bill.

Senator GERRY. Do we license narcotics that are imported? How is that handled.

Mr. BEVANS. Yes, Senator; but there you have again a different case.

Senator GERRY. That is what I am trying to bring out. That you license when it comes into a health proposition like alcohol or drugs, and not merely a commercial one.

Mr. BEVANS. That is right.

Senator GERRY. And the only exceptions that you get on licensing are when you go into a question of health or the general welfare of that sort.

Mr. BEVANS. It does seem that when we have been engaged in tariff legislation, probably more tariff legislation in the United States than in any country in the world, since the earliest days of the country, and elaborate administrative systems, and an elaborate force set up to prevent and detect fraud, that it seems that we should have to depart from that at this time and adopt a licensing system because a particular commodity and the smuggling of it is developing, is a dangerous one. There ought to be some other way to stop that.

Senator METCALF. How is it with jewelry? Is there a lot of jewelry smuggled in small packages?

Mr. BEVANS. I could not say as to that, Senator, but the diamond situation—in 1922 the Republican Tariff Act of 1922—I think it took the place of the Democratic Tariff Act of 1920, the duty was increased on diamonds—I may be mistaken as to the dates of the tariff acts. In any event, when the next tariff act was under consideration by Congress, the Government officials and those legitimate importers and domestic jewelers came to Congress and they said that it is absolutely impossible to prevent the smuggling of diamonds where the rate of duty is so high that it makes it a very profitable proposition.

Senator GERRY. I think the Government records show, and if I am not mistaken Senator Underwood brought that out in the act of 1913, that when you put a higher tax than 10 percent on diamonds, you get smuggling. And I think in 1922 when that act was passed, they passed a higher act and found that it did not work and they had to go back. I think the records show that you cannot put more than 10 percent or you start smuggling and you lose revenue.

Mr. BEVANS. You take watch movements, and what I am stating now is of course only what I get by talking with importers; I am not in that business myself. You have ad valorem rates the equivalent of which run as high as 180 percent. The rates of duty were increased in the act of 1922, and they were further increased in the act of 1930. If those rates are reduced to a reasonable rate, it seems to me you have the same solution that you had in the diamond case,



in other words, smuggling will not be very profitable and it will become negligible.

I understand that they are negotiating now, there are negotiations pending between the United States and Switzerland. I don't know whether watches and watch movements are going to be considered, but it is an important article of export from Switzerland, and I assume it will. If by any chance those rates should be reduced, I think this problem disappears.

Senator GERRY. In this bill as I understand it, they stamp the movements, do they not?

Mr. BEVANS. You mean in this proposed bill?

Senator GERRY. And the idea of that is so that they can trace the movements afterwards?

Mr. BEVANS. My understanding is that the Secretary of the Treasury probably after investigation of each applicant for an import license, is going to assign a symbol or design a device to each importer to be placed on the bridge of the watch, or what they call the pillar plate, I believe of the watch, in some way where it can be examined. Every dealer, including importers, wholesalers and retailers throughout the United States who handle watches, will be required to file an inventory of all of the watches that he has on hand when this act becomes effective. That presumably is to make a record of those which naturally are not marked because they are already in the United States. Then I assume that the Government's investigating officers will make calls on these various dealers to see whether they have in stock any watch that is not so marked and perhaps if they have a watch with a certain symbol, they trace it to see whether that is a genuine symbol or whether it is a counterfeit. I assume that is the way it is going to be administered, but I understand there are at least 20,000 outlets for watches in the United States. You take the small jewelry stores, and the premium houses, even tobacco and cigar stores sell them, and it seems to me that that would be a tremendous job.

But my objection is to the policy principally.

Senator WALSH. Are there any other witnesses who desire to appear in opposition?

#### STATEMENT OF A. K. SHIPE, WASHINGTON, D. C., REPRESENTING THE NATIONAL ASSOCIATION OF CREDIT JEWELERS AND RETAILERS

Senator WALSH. Your residence, please?

Mr. SHIPE. Washington, D. C.

Senator WALSH. Your business?

Mr. SHIPE. I am an attorney.

Senator WALSH. Representing whom?

Mr. SHIPE. National Association of Credit Jewelers and Retailers. We are opposed to the bill insofar as it affects retailers. We think that this bill—speaking as an attorney, I think the bill contains unlawful delegation of authority and power to the Secretary of the Treasury. The provisions here give to the Secretary of the Treasury the right to go into every retail store, retailer of jewelry and watch parts in the United States and to determine, after an in-

vestigation, open every watch and look into every one of them and determine whether or not they have a symbol on them, and that means a tremendous harassment to the jewelry business. It results, as a matter of fact, in an impractical and impossible situation so far as the enforcement is concerned. There are over 40,000 of them in the United States, and I should think that from an administrative standpoint, that it would be impossible for the Treasury Department to have a sufficient force to go out into some 40,000 different places—how many times a year we do not know, or how many times a month we do not know—and interfere with and embarrass and harass the retail jeweler in this country by such investigations.

We do not believe that this is a solution of this problem.

Senator WALSH. I assume that it would only be done where it is suspected that smuggled watches and watch parts are being sold, would it not?

Mr. SHIPE. If you engage upon such an assumption, that might be all right. However, there is nothing in this act that provides that the Secretary of the Treasury shall first have reasonable grounds on which to believe that there is smuggled jewelry in this particular store.

Senator WALSH. Of course, there is no way now under existing law for the Treasury or the Customs authorities to detect smuggled watches in a retail store?

Mr. SHIPE. No.

Senator WALSH. Because they are not marked, and because they look just the same as the domestic produced parts.

Mr. SHIPE. Is it the intent under this act to have every watch in the United States that has not been sold that is presently in jewelry stores for sale, legitimate importers or legitimate domestic manufacturers, marked with symbols, is that the intent?

Senator WALSH. No; that is not the intention of this act. It is that a record should be made of what they already have on hand that are not marked, and watches and parts that they have in the future shall be marked, and if they have parts that are not marked in the future, they would be subject to this law.

Mr. SHIPE. We observe that section 5 provides that if any person importing watches or watch movements or parts into the United States, or if any importer of merchandise of such character at a Government sale fails at the request of the Secretary of the Treasury or the collector of customs, as the case may be, to permit a duly accredited officer of the United States to inspect his stock or books, papers, records, accounts, documents, or correspondence pertaining to such merchandise, or the purchase or importation thereof, then such person shall be subject to a penalty of not more than \$1,000 and, while such failure continues, the Secretary of the Treasury, under regulations prescribed by him, (1) shall prohibit the importation of merchandise into the United States by or for the account of such person and (2) shall instruct the collectors of customs to withhold the delivery of merchandise imported by or for the account of such person. If such failure continues for a period of 1 year from the date of such instructions, the collector shall cause the merchandise, unless previously exported, to be sold at public auction as in the case of merchandise forfeited under the customs laws.

Now, suppose there is a retailer engaged in the business of selling watches, and he refuses to be harrassed by officials of the Treasury Department, all that the Secretary of the Treasury has to do then is to impose a \$1,000 fine on him without any hearing, without any reasonable determination whether the jeweler is right or wrong; just places a \$1,000 fine on him, and then reports to all legitimate importers that they shall not sell any more watches to that man. I conceive that that is very arbitrary.

Senator GERRY. Is he not afforded an opportunity for hearing in court first?

Mr. SHIPE. No, sir; I do not see any provision for any hearing before the penalty of \$1,000 is imposed upon him.

Senator GERRY. I would like to ask the Treasury expert if that is true.

Mr. SPINGARN. The provision to which the gentleman called attention is patterned almost exactly after section 511 of the Tariff Act of 1930, and the provision is there also that if an importer fails to permit the Secretary of the Treasury to inspect his records, correspondence, documents, and so forth, he cannot import further. No penalty, of course, can be imposed without a hearing. That is a constitutional guarantee which is read into every statute of this character and need not therefore be spelled out.

Senator GERRY. He has stated about a \$1,000 fine.

Mr. SPINGARN. The \$1,000 penalty is designed to cover the case of people who are not importers. Section 511 of the tariff act is restricted entirely to importers in its application, and the only penalty in connection with them was that they could no longer make importations if they refused to permit inspections.

In the present case, however, we are also covering people who deal in this imported merchandise or buy it at Government sales. Inasmuch as they would not necessarily be directly importing, there would be no penalty involved in denying them the right to import. Therefore, for them there is provided a pecuniary penalty.

Senator GERRY. How is this penalty arrived at? How could they be fined in this way?

Mr. SPINGARN. The constitutional authority, you mean?

Senator GERRY. Yes. If they find that they are selling watches?

Mr. SPINGARN. Under the plenary power of Congress to regulate foreign commerce.

Senator GERRY. I think we are talking at cross purposes.

Senator WALSH. As I understand it, if the retailer is found to have smuggled watches in his possession, there is no way for the customs authorities to reach him, if he is not an importer, except through some provision of law such as this.

Mr. SPINGARN. That is exactly right.

Senator WALSH. And the same provision of law applies to other merchandise that is smuggled into this country under the general tariff acts?

Mr. SPINGARN. That is right respecting importers.

Mr. SHIPE. We do not agree with that at all. We think if you are going to pass legislation of this nature, pass the legislation that affects the persons who do the smuggling, and do not penalize business in this country, including jewelers, to the extent of all of the embarrassment and harassment and interference in the conduct of

their proper business by the enactment of laws of this nature when you are seeking to penalize the man who did the smuggling. That seems to be entirely unfair.

Now, to go over to section 7.

Section 7 reads as follows [reading]:

Within one hundred and fifty days after the enactment of this Act any importer, wholesaler, or retailer of watches, watch movements, or watch parts may voluntarily file with the collector of customs in the district in which such importer, wholesaler, or retailer is operating an inventory of all watches and watch movements, whether complete or incomplete, having more than one jewel, or having one jewel and one or more bouchérons or bushings, and all pillar plates and top bridges if imported separately on hand on the ninetieth day after the enactment of this Act, which were imported into the United States prior to ninety days after the enactment of this Act. If any such watch, watch movement, or watch part be not marked pursuant to this section, this shall be prima facie evidence in any administrative or judicial proceeding for the forfeiture of such watch, watch movement, or watch part under the provisions of this Act or any provision of the customs laws, that such watch, watch movement, or watch part was in fact unlawfully imported into the United States.

Senator GERRY. Pardon me. Under section 5 of this act, as I understand it, this penalty of \$1,000 only applies if they refuse to allow inspection of the books; is that clear?

Mr. SPINGARN. Yes, sir.

Senator GERRY. I did not understand the statement of the witness.

Mr. SHIPE. It is \$1,000 if the retailers simply say to these people: "I do not think you have any right to come in and interfere with my business and investigate on a fishing expedition. I am telling you I have no smuggled watches in my possession." And they say, "We do not believe it." They go to work then and insist upon going through his stock, and going through it and inspecting every one of these watches over a period of hours or days, and we say that it is not proper to give to the Secretary of the Treasury the right to fine him \$1,000, with the possibility or the very great probability of putting him out of business through arbitrary regulations.

As I say, I am only representing the retailers, and I think they ought to be out of this picture entirely.

Senator WALSH. Is there anything further on section 7?

Mr. SHIPE. That section provides a voluntary report or inventory of every watch or every watch part of every jeweler in the United States to be filed with the Secretary of the Treasury.

You gentlemen of this committee can readily see what a tremendous undertaking that is to the jewelry business. There are literally, probably billions, of watches and watch parts that have to be accounted for. There are over 40,000 jewelers in the jewelry business, legitimately so. They have to go into all of the records.

Senator METCALF. That would help your employment.

Mr. SHIPE. Yes; but it would not help the jewelry business any, which is suffering under severe handicaps as it is, and we do not think that that requirement should be put into effect here. Certainly it says "within 90 days." I dare say that there are many jewelers who would find it impossible.

Senator WALSH. It has been suggested that that be changed to 6 months or a year. That is desirable, I suppose, assuming the bill is enacted.

Mr. SHIPE. I understand that is section 2 (a) you refer to.

Senator WALSH. I thought it applied to each place in the bill. Is there anything else, sir?

Mr. SHIPE. That is all, I think; except, as an attorney, I think the bill is unconstitutional.

Senator WALSH. Who is here representing the domestic manufacturers.

**STATEMENT OF C. M. KENDIG, TREASURER HAMILTON WATCH CO., LANCASTER, PA.**

Senator WALSH. Where do you reside?

Mr. KENDIG. Lancaster, Pa.

Senator WALSH. What is the name of the company with which you are connected?

Mr. KENDIG. Hamilton Watch Co.

Senator WALSH. And what is your office with that company?

Mr. KENDIG. I am treasurer of the Hamilton Watch Co.

Senator WALSH. How large a factory or plant has this watch company?

Mr. KENDIG. We employ 1,390 at this time.

Senator WALSH. What kind of watches do you make?

Mr. KENDIG. We make 17-jewel and up.

Senator WALSH. Will you tell us what your interest is in this proposed legislation, why you think it is necessary, and what your experience has been with competition from smuggling?

Mr. KENDIG. Mr. Chairman, I think I speak for the entire industry, whether domestic or the importers, that we appreciate this courtesy of this hearing before you on this very hot day. Some of you gentlemen are familiar with the efforts we have had in the last 5 years to control this smuggling of watches. Only last year a measure similar to this was passed unanimously by the House and by the Senate and was vetoed by the President on the urgent solicitation of the Secretary of the Treasury, because he stated that the Treasury Department was making a very careful study of the whole smuggling problem, and it was thought that a better method would be devised than the one indicated in our bill.

So, naturally, at this session of Congress we went around to the Treasury Department and asked them if they had given this very grievous problem their attention; and they said "yes", that they had, and it is practically in legislative form; and this bill that you are considering now, gentlemen, is the result of their study.

It is a matter of disappointment to me that there is any controversy about this. It has the endorsement of the entire American industry. It is supported by the State Department, it is supported by our Treasury Department, and we had hoped it would have the support of the importers as well.

I am here speaking, gentlemen, not as a lawyer; I am not a lawyer and I cannot review many of the arguments of the legal profession, but I am here in the interests of 6,000 skilled American workmen.

This smuggling is a problem, and our importing friends agree with us. They agreed with us before the House Ways and Means Committee the other night, and if the Treasury Department, who have more figures than we have—we cannot tell you how many watches

have been smuggled, and we can only tell you just what the Treasury Department tells us.

Inasmuch as from the remarks I discovered they were quite controversial the other night, I should like to just confine myself to the statement of the Secretary of the Treasury when he says that between the dates of September 17, 1929, and November 14, 1932, there were seized and confiscated 91,843 watches.

Senator WALSH. What does that represent in watches, approximately?

Mr. KENDIG. The domestic value is \$366,915.00. These are the Treasury figures that I am giving you, from the report of the Ways and Means Committee.

Senator WALSH. If the same percentage of smuggled goods were seized by the Treasury Department in watches as the percentage of liquor was seized—bootleg liquor—there would be a value very much greater than that—an awful lot of smuggling, would there not?

Mr. KENDIG. That is just the point I want to make, gentlemen. Some of the men who were in the prohibition-enforcement group said, "We think we got about 10 percent of the liquor." Some of the men in the enforcement of this division that has to do with the smuggling of watches say, "Well, I don't suppose we made any better job of it."

If they have seized 92,000 watches, a definite Government record—

Senator WALSH (interposing). In what period of time?

Mr. KENDIG. From September 17, 1929 to November 14, 1932; and you multiply that by 10, gentlemen, and it takes 12½ hours of American labor to make a watch, and you will see that if you multiply just these seized watches by 12½ you get a very large amount of working hours that the American citizen has been deprived of.

At our hearing the other night, our friends, the importers, made certain exceptions, and we have agreed to quite a number of those exceptions. For instance, when the law was written "after 90 days" one of these gentlemen said, "Well, they know it takes more than 90 days to make a watch, and that is too short a time. It ought to be a year."

In considering the matter, and in the desire to be eminently fair with these gentlemen, we said, "We will compromise and make it 6 months." That objection has been met.

The point I cannot quite realize with these importers is whether it affects the domestic manufacturers or whether it affects the importer of watches; this sale of smuggled watches is a type of competition neither of us can meet, and that is why I think we ought to join hands on this.

Senator WALSH. In other words, the legitimate importer is just as much handicapped through smuggled watches?

Mr. KENDIG. I think more so.

Senator WALSH. Just as much as the domestic producer of watches?

Mr. KENDIG. Yes. It is a type of competition we cannot meet. We have just gone through 2 years of this N. R. A. Our costs have been advanced 25 percent, and we have not been able to get anything out of the selling price, because the purchasing power is not there.

We have absorbed all of those costs of the N. R. A., and yet here was a type of competition that is just impossible to meet.

Senator WALSH. To what extent have you observed this competition? I suppose it is pretty hard for you to put your hands on it directly.

Mr. KENDIG. Senator, it is not. Let me tell you, gentlemen, when a smuggled watch is sold, that purchaser is definitely out of the market for a period of 5 or 10 or 15 or probably 20 years. He has got a watch, and he is no longer a potential or prospective customer for either the reputable importer or the domestic manufacturer.

That is the great difference between that and this liquor problem. If you sell a man a bottle of liquor and he drinks it up, it creates an appetite for some more; but if you sell a man a watch, he is watched up, and he is out of the market.

Senator WALSH. Will you explain, if you can, to what extent you have contacted and found on sale in this country, smuggled watches?

Mr. KENDIG. I do not have the record here, but it was presented at the hearing before the National Recovery Administration. We shopped in New York City, and we found smuggled watches for sale in a great many very fine stores. There is a record in the Treasury Department of all of these watches that have been smuggled; I mean all that have been seized, with the record of their names. They are not the names of a reputable Swiss manufacturer or a reputable American importer, but it has got another name on. That is why they are traced.

Senator WALSH. If I have 50 watches in my store in New York City that are smuggled in, and I am selling them as a retailer, there is no way under existing law to punish me?

Mr. KENDIG. No.

Senator WALSH. And there is no way to hold me responsible. The purpose of this law is, as I understand it—one of the purposes of this law—is of requiring watches that are imported to be marked and that I then would be on guard and protected as a retailer in knowing that I had no smuggled goods.

Mr. KENDIG. That is the idea exactly.

Senator WALSH. Who puts these parts together? How is that done?

Mr. KENDIG. The smuggled watches are just imported just in the movements.

Senator WALSH. Who assembles them?

Mr. KENDIG. They must be put into a case, and put into an individual box by the distributor.

May I say further, that having purchased them from the Government of the United States, they have put on that watch the Government stamp of authenticity, so the man can say, and we showed at the last year's hearing, "Here it is."

I want to show you here an advertisement appearing in the New York Times. "Bought of the United States Government at public auction, so many 17-jeweled watches that we are selling for \$5, and the duty alone on them would have been \$4."

When you talk about domestic recovery and being forced to even consider meeting anything like that through our importing friends, or our domestic manufacturers, it is just out of the question.

This bill is not going to be a cure-all, Senator, but it is going to have a very moral effect. They will all realize that there is a law passed to protect the reputable importer and the domestic manufacturer, and they are not going to be so keen about picking up these bargains—a watch that ought to sell for \$10 or \$12, for a quick sale at \$2.50, because they know now if they get them into their stock and they are not properly marked, they are going to be in trouble.

I thank you, sir.

The CHAIRMAN. The next witness, please.

**STATEMENT OF TAYLOR STRAWN, VICE PRESIDENT, ELGIN WATCH CO.**

Senator WALSH. Where do you reside?

Mr. STRAWN. Lake Forest, Ill.

Senator WALSH. With what watch company are you connected?

Mr. STRAWN. The Elgin Watch Co.

Senator WALSH. In what capacity?

Mr. STRAWN. Vice president.

Senator WALSH. You may present any views you entertain on this matter.

Mr. STRAWN. Ever since the small watch became the principal item of sale in this country, smuggling has been profitable, and while these figures are disputed, we all, I think, agree that there is a tremendous amount of it. We cannot possibly meet it; it is getting worse.

This bill we have studied, and we think it is sound. As Mr. Kendig said, while it may not cure the situation, it certainly is a step in the right direction.

Senator WALSH. You have proposed other bills in past years that did not meet with the approval of the Treasury, as I understand it.

Mr. STRAWN. That is true.

Senator WALSH. And this is the first one that has met with the approval of the domestic manufacturers and the Treasury, and a certain class of importers?

Mr. STRAWN. That is correct, sir. It is such a broad subject, I do not know whether you want me to ramble on, because I imagine it will take up quite a good deal of your time.

Senator WALSH. Did you testify before the House Ways and Means Committee?

Mr. STRAWN. Yes, sir.

Senator WALSH. Then, we have your testimony from the record there?

Mr. STRAWN. Yes, sir.

Senator WALSH. You really think the extent of this smuggling is a material damage to the domestic industry?

Mr. STRAWN. It undoubtedly is, and I think it is of such proportions that the importing of watches should be taken out of the general consideration of imported merchandise and be treated specifically, such as liquor and things like that, narcotics, where there is a tremendous abuse and loss of revenue to the Government.

Senator WALSH. What percentage do you think—of course, it is more or less of a guess, and I assume perhaps your guess would be more or less prejudiced by the fact that you are a producer—but



what percentage of watches in this country that are sold each year are smuggled?

Mr. STRAWN. I think at least one-third of the watches.

Senator WALSH. One-third?

Mr. STRAWN. Yes, sir. For instance, in 1932 the imports were 433,000.

Senator WALSH. The admitted imports?

Mr. STRAWN. Yes; the legitimate imports. The domestic production was 432,000, and I think there were some 400,000 smuggled. Of course, this is all a guess. Nobody can tell how much is smuggled.

Senator WALSH. We will have your testimony from the record of the Ways and Means Committee.

Is there anyone else among the domestic producers who desires to be heard?

#### STATEMENT OF FREDERICK C. DUMAINE, JR., REPRESENTING THE WALTHAM WATCH CO., WALTHAM, MASS.

Senator WALSH. You reside where?

Mr. DUMAINE. Weston, Mass.

Senator WALSH. You are connected with what watch company?

Mr. DUMAINE. The Waltham Watch Co.

Senator WALSH. Waltham, Mass.

Mr. DUMAINE. Yes.

Senator WALSH. How many employees have you at your company?

Mr. DUMAINE. Two thousand two hundred and fifty, approximately.

Senator WALSH. Just a moment. I forgot to ask you, Mr. Strawn, how many employees you have?

Mr. STRAWN. Something over 2,600 now.

Senator WALSH. What views would you like to submit to the committee, Mr. Dumaine?

Mr. DUMAINE. I have a great many ideas about the importation of foreign watches. At this particular time I would like to say that this is the real concerted effort by the United States Government to help their American workers against the illicit trade that is going on in this country.

We manufacturers as a whole are very pleased to work with the Treasury Department and the State Department and the Customs Department to work out this problem. It has been about 10 years bringing it to a head. We hope you will give it every consideration.

Senator WALSH. Now, the gentleman who represents the importers may come forward.

#### STATEMENT OF GEORGE J. GRUEN, TREASURER GRUEN WATCH CO., CINCINNATI, OHIO

Senator WALSH. Give your residence and occupation.

Mr. GRUEN. Cincinnati, Ohio. I am treasurer of the Gruen Watch Co. of the same city.

Senator WALSH. We will be pleased to have your own views. Whom do you represent, for the record?

Mr. GRUEN. I am also president of the American Watch Assemblers' Association, which is made up of importers, the importers' group. That name was adopted at the time we had our code adopted by the N. R. A.

Senator WALSH. Just what is the Watch Assemblers' Association? That means those companies and persons who make a business of assembling the parts of watches?

Mr. GRUEN. May I correct some of your statements, Senator?

Senator WALSH. Certainly.

Mr. GRUEN. You have been referring to parts all the time in your conversation, and I think that was just a mistake in your mind. The smuggling has been primarily of watch movements. A watch movement is an assembly of parts, and those assembled parts are all in the shape of a watch movement, and they are imported that way by legitimate importers, and likewise they are smuggled that way.

I do not think the question of parts, at least, we have not discovered it up to now, has been a serious thing.

Senator WALSH. A part would be the case, for instance?

Mr. GRUEN. Perhaps I can illustrate the point better here [exhibiting case of watch parts].

This does not happen to be my merchandise, and I can very easily show it without prejudice. These [indicating] are the small parts. This is what will be referred to later on as bridges [indicating] and pillar plates [indicating].

Senator WALSH. Where are the movements?

Mr. GRUEN. That is not the movement. That is just the parts of the movement. That is just the inside of it.

I would like to make this statement at the outset: Our association is vitally interested in the reduction of smuggling, and we concur in the statement made by both Messrs. Strawn and Kendig that it is a serious menace to legitimate importers, particularly those that import the lower grade of goods and where it is on a price basis.

Our objection to the bill is from the standpoint of licensing our industry. We cannot quite figure out why there should be a valid reason for singling us out. We feel that there are smuggling laws in existence at the present time. If they are not ample to cover, let them be broadened by amendments.

I have personally featured this idea myself of having the Government have access to the records of the importers at any and all times, and I stand on that today. I think that is the method.

But whether you have to tack onto that method a license where we might be put out of business by a department ruling, that is a thing that I fear, and that is what the other members fear. I do not know of any that are objecting to the idea of having records and keeping records. We, for one, do not, and a great many others do not.

Senator WALSH. Do you think there is danger of a licensed importer being put out of business unless he is proceeding illegally?

Mr. GRUEN. That is open to question.

Senator WALSH. The Department tells me that there have only been two cases before it since 1930 of irregularities on the part of licensed import brokers.

Mr. GRUEN. There is another point that Senator Gerry brought up, and it does not surprise me that he would not be familiar with all of the intricacies of this particular section, because it has stumped a good many of them.

We have at the present time a mark. We must mark the name of the importer, the country of origin, the number of jewels, the adjustment, if any, and if not adjusted. Those markings must appear on there now, and it is asked that we put an additional symbol for an identification mark. I think that is a very happy thought, and I think it could be incorporated elsewhere and to have an identification mark.

I made these notes while the other gentlemen testified. You inquired as to how the smuggling has been mainly done. It has proven that there were just two or three groups. They have been caught and convicted largely through the importers' efforts. They detected, in the course of their going around selling merchandise, that they were up against definite competition that they could not meet. The largest seizure, I believe, was through an importation of pottery, or it was through the seizure of furs—smuggling it with furs. Those were their two very large seizures. They were imported through the port of customs at New York, and it was only with the connivance of the port authority that it could have happened, and certain persons were convicted for it—Government agents.

Senator WALSH. Government officials.

Mr. GRUEN. Yes. They had, in the one instance, about eight cases of pottery that came over. Five were legitimately pottery and three had movements. When they called for the boxes that had pottery, they were examined—those that had the pottery—and the shipment went through. The same thing happened with French stationery.

You were the author of a bill last year for the destruction of the movements.

Senator WALSH. Yes.

Mr. GRUEN. We are all heartily in favor of that; that is one of the recommendations we are trying to bring forth now.

Senator WALSH. That is the one the President vetoed.

Mr. GRUEN. When that merchandise is sold, it comes directly in competition, and usually it has been bought by the men or the smugglers themselves, and they use that for advertising purposes. That has been illustrated there in that advertisement. It is not a few watches that they sell that way.

Senator WALSH. In other words, where smuggled goods are seized and the Government has a sale afterward, the very person who has attempted to smuggle them in can go and buy them and put them in competition with the legitimate producer?

Mr. GRUEN. Yes.

Senator WALSH. I knew that you favored that measure.

Mr. GRUEN. The same type of people that will buy that will put out advertisements like that, as we call it in the trade, "come-on"; they do not want to sell that \$5-watch; they want to sell something else; but they use that fact, that they have bought some Government merchandise, to support them.

We have prepared a memorandum——

Senator WALSH (interposing). What do you say as to the extent of smuggling as compared with what the seizures have been?

Mr. GRUEN. We are very pleased to notice that today the figures have dropped very materially. Perhaps the hot weather has caused them to melt, but anyway they have gone down, from a million to two or three hundred thousand, and I think that that figure is excessive.

We have in this memorandum a method showing how we figure there.

Senator WALSH. How many movements were in these three boxes that were seized?

Mr. GRUEN. That shipment had 40,743.

Senator WALSH. How many watches would that make?

Mr. GRUEN. That was the number of movements. Then there would naturally be casing them up. I think in this instance, some of them were even cased complete. The value was about \$35,000.

Senator WALSH. There was just one seizure of three boxes of this large number and that value.

Mr. GRUEN. That gives you some clue that there is some smuggling done. It has always been the same group. Later on, the same group were caught; and after they had been convicted and come back, they seized another lot of 13,000.

Senator WALSH. Was there any confession made by these Government agents as to how long this had been going on and to what extent it had been carried on?

Mr. GRUEN. I think there was, but I am not qualified to answer that.

Senator WALSH. Do you know about the convictions in those cases?

Mr. GRUEN. No; I am afraid I could not identify those.

Senator WALSH. How many officials of the Government were involved?

Mr. GRUEN. I know two, and I think there were three. One was an inspector.

Mr. HESTER. The Department of Justice would have those records, Mr. Chairman.

Senator WALSH. Yes; of course. You may proceed.

Mr. GRUEN. You asked us how we are arriving at our figures. As a matter of figures, no matter what figures you get, you pick them out of the air; but we took the statistics supplied by the Bureau of Foreign and Domestic Commerce, and it shows the sale in 1929 of approximately 20,000 retail jewelery stores throughout the United States to be \$536,280,000, whereas in 1933 the number of jewelers in business had been reduced to approximately 14,000, and their volume of sales decreased to \$175,000,000. This was a reduction in volume of sales of 67½ percent. The reduction in the domestic production, or the total wages from 1929 to 1933, was approximately the same amount, 67½ percent.

Certain memoranda that I had made has been covered by previous gentlemen, and I do not think it need to be repeated here. I know you have lots of work, and it is hot, but I would like to go to the bill itself.

At the hearing of the Ways and Means Committee there were a number of suggestions that we made on the bill itself. Some of those, after hearing Chairman McCormack and others make their

comments, clarified them in our minds, so that we have gotten down to a fewer number of corrections; and if you wish, I would like to read them all under the bill itself.

Senator WALSH. Do you think it is necessary? Why not agree that they should be inserted in the record at this point and leave your memorandum with the stenographer and it will be inserted.

Mr. GRUEN. We have eliminated certain ones that were clarified.

Senator WALSH. We will be very glad to have those.

Mr. GRUEN. There was one section that was in your original bill.

Senator WALSH. The bill that was vetoed?

Mr. GRUEN. Yes. Some objected to it and some said it was good.

Then, to bring out of course that point that Mr. Bevans brought out relative to the proper review, protest, and a hearing to be granted, we did not think it was covered fully enough in the Act as drawn.

Senator WALSH. Before you retire from the witness stand, will you let us know something about the membership of your organization?

Mr. GRUEN. Yes.

Senator WALSH. How many members are there in it?

Mr. GRUEN. As I said, somewhere around—the membership, I would say, is somewhere around 60, but those engaged in the business are between 75 and 100, as near as we can tell.

Senator WALSH. I do not know that I quite understand just what is their business.

Mr. GRUEN. They import movements primarily. While they import parts—

Senator WALSH (interposing). And pay the duties upon them legitimately?

Mr. GRUEN. We think all of our members do.

Senator WALSH. And when they are put together—

Mr. GRUEN (interposing). Perhaps I can follow your thought.

Senator WALSH. Please do.

Mr. GRUEN. I will speak for ourselves. The Gruen Watch Co. imports the movements from its own plant abroad, which it owns by American capital. Those movements are completed. When we receive them in the United States, we give them the final adjustments and the final timing. We manufacture in our own plant at Cincinnati, the cases. The others, some of them have their own case-manufacturing plants. At Bulova, they have them at Providence, and they have others that buy them from case manufacturers.

Those movements are inserted into the case, and they buy the bracelets or straps. The ladies' are all practically bracelets. They buy those from bracelet manufacturers, mainly in Providence and up in the Attelboros, and then it is put in a box ready for sale to either the wholesaler for him to distribute, or, mainly, direct to the retail jeweler. They do import some parts, but what they do is chiefly for repair parts.

When it comes to the question of parts, because you do not have that question clear in your mind, I might say here, in the data for January 1935, which is bringing it quite close to now, the amount of the movements imported were \$93,923. That is the dollar value.

Jewels for movement and mechanisms were \$67,120. Those jewels are used mainly in the manufacture of watches and clocks in this

country. Practically all jewels that are in watches are made in Switzerland.

Watch parts—at the same time they had an importation from Switzerland of \$49,000, made up largely for repair parts.

Senator WALSH. I thank you very much.

(At this point the following memorandum was presented:)

**MEMORANDUM SUBMITTED TO THE COMMITTEE ON FINANCE, UNITED STATES SENATE,  
BY THE AMERICAN WATCH ASSEMBLERS ASSOCIATION PRESENTING OBSERVATIONS  
AND CONCLUSIONS WITH RESPECT TO THE PROPOSED LEGISLATION**

The smuggling committee of the American Watch Assemblers Association has carefully considered Senate bill 3287, designed to reduce or eliminate the smuggling of watches, watch movements, and watch parts into the United States, by the provision of a licensing system to be administered by the Secretary of the Treasury, and presents herein its objections to the proposed legislation.

The American Watch Assemblers Association comprises approximately 100 firms whose business is entirely American owned. The investment is in excess of \$18,000,000. Many of the firms have been engaged in the watch business for from 25 to 70 years. A. Wittnauer & Co. of New York has been established since 1866; the Gruen Watch Co., Cincinnati, Ohio, 1874; the Ollendorf Watch Co. since about 1870, and the Bulova Watch Co. had its inception in 1875 in the jewelry business. The business of the members of this association is rightly considered a United States manufacturing industry for the reason that more than 90 percent of the imports constitutes material for further manufacture in the United States. Taking the figures stated in the statistical report prepared by S. D. Leisdesdorf & Co., certified public accountants, and presented to the National Industrial Administration for the American Watch Assemblers Association, 86.9 percent of the total receipts in this industry were disbursed in the United States.

The sales of the American Watch Assemblers in 1932 were estimated to be approximately \$11,962,000, and of this amount there was disbursed to foreign manufacturers of watch movements and parts only \$1,574,920. The remainder (\$10,387,080) was disbursed in the United States, \$1,700,000 being paid for direct labor and \$1,338,013 to the United States in the form of duties. Of the \$11,962,000 realized from the sales of foreign watch movements after having been assembled to form complete watches in the United States, approximately 13 percent plus was distributed to foreign manufacturers and 12 percent plus to direct American labor. Labor in the United States received a great deal more than 12 percent because they were used in this country in assembling the foreign movements, watch cases, bracelets, and boxes, all of which were wholly manufactured in the United States.

This association is opposed to the proposed control of the importation of watches and watch movements by the Secretary of the Treasury through the medium of licensing system in S. 3287, for the following reasons:

1. The stated ground upon which this proposed legislation is predicated is the smuggling in large quantities of foreign watch movements. It has been stated by those sponsoring this bill that in 1932 there were at least 1,000,000 movements smuggled into this country. This is arrived at by totaling the number of jeweled movements produced in the United States and the number of such movements imported, and deducting such total from an estimated consumption of watch movements during that period. According to this computation there were smuggled into this country more than twice the number of jeweled movements imported and duty paid. This figure which is purely an estimate is very greatly exaggerated. This would seem to be borne out when a comparison is made of the percentage reduction in domestic production of jeweled watch movements from 1929 to 1933, and the percentage of reduction in retail sales for the same period. Statistics supplied by the Bureau of Foreign and Domestic Commerce show sales in 1929 of approximately 20,000 retail jewelry stores throughout the United States to be \$536,280,000, whereas in 1933 the number of jewelers in business had been reduced to approximately 14,000 and their volume of sales decreased to \$175,066,000. This was a reduction in the volume of sales of 67½ percent. The reduction in domestic production of jeweled watches from 1929 to 1933 was approximately 67½ percent. This reduction being in direct proportion to the reduction in the reported retail

sales, clearly indicates that there was no considerable smuggling of watches and therefore no real loss of business due to smuggling.

This estimate of 1,000,000 smuggled jeweled watch movements in 1932, is further shown to be exaggerated by the figures stated in Report 1411 on a bill, H. R. 8624. In that report it is set forth that from September 17, 1929, to November 14, 1932, about 91,000 smuggled watch movements were seized which is there estimated to be about 15 percent of the total number of movements unlawfully brought into this country. The annual average of seized movements would be approximately 30,000 for the period stated and if the quantity seized represented 15 percent there would have been smuggled about 175,000 movements each year. This is very materially less than the million figure so often used by domestic manufacturers in advocating the various measures that have been suggested. We, however, believe that 175,000 movements would be excessive. One hundred and seventy-five thousand movements would represent in some years since 1932 practically 50 percent of the number of movements imported legitimately. From the amount imported legitimately approximately 50 percent represents importations of Gruen Watch Co., Witnauer, and Bulova, which never come in contact with smuggled movements. Therefore, it would have to be assumed that the same number of watch movements are entered illegally as are entered legally and as a matter of practical business it is absolutely impossible that this number of smuggled movements could be sold in the open market.

We believe, therefore, that the smuggling of watch movements does not present a sufficient justification for placing the entire industry upon a license basis.

2. We believe that the delegation of such authority to an administrative officer such as the Secretary of the Treasury to control the import of watch movements by the granting of licenses under rules and regulations to be promulgated by that official especially without judicial review would present serious interference and hazard to the business of the legitimate importer. There would necessarily arise many questions of practice and procedure and the interference to business caused by the delay in obtaining decisions from the Treasury Department would necessarily present a very serious situation. Further, it would make the tenure of business of any licensee exceedingly uncertain.

3. We are of the opinion that the proposed licensing system would not accomplish the results intended; that is, have any appreciable effect in preventing the smuggling of watch movements for the reason that anyone willing to smuggle a watch movement would not hesitate to counterfeit any symbol or other markings adopted by the Secretary of the Treasury under the proposed legislation, and inasmuch as there are more than 25,000 outlets for watches in the United States it would be a matter of absolute impossibility to afford an effective check through the proposed plan. Experience in the administration of customs laws has demonstrated that excessive duties on articles of small size are an incentive to smuggling. The duties on watch movements was increased in 1922 and further increased in 1930, and run as high in equivalent ad valorem as 180 percent. If these duties were materially reduced we believe that smuggling would no longer be profitable and there would be no problem and even the amount of smuggling that now exists would become negligible.

We understand that negotiators, representing the United States and Switzerland, are now engaged in discussions preliminary to the adoption of a treaty in which the duties will be reduced on certain products of the United States imported into Switzerland, and on products of Switzerland imported into the United States. It is very probable that one of the classes of commodities on which duties will be reduced will be watches, watch movements, and watch parts. If the duties are so reduced, undoubtedly it will no longer be profitable to do any extensive smuggling of watch movements and the unlawful importation of such products will be negligible. It is suggested, therefore, that it is inopportune for the proposed legislation to be enacted at the present time.

If, however, it should be decided that some plan of the character proposed should be adopted, we desire to make the following suggestion for improvement of the proposed legislation as presented in S. 3287.

## CONSIDERATION OF S. 3287

Section 2: Page 3, subparagraph (b), instead of providing that the license "shall remain in force for 1 year", substitute, "shall be renewable annually."

Section 3. We believe that this section should be amended to read (lines 11 to 17, inclusive) as follows:

"No license shall be issued under this Act to any person who (a) has been convicted of smuggling; (b) falls or refuses to comply with the provisions of this Act, or any rules or regulations issued hereunder; or (c) fails to file the voluntary inventory provided for by section 7 of this Act."

There are a great many customs laws, the administrative sections of our tariff act being very numerous and complex. This proposed act is to prevent smuggling, and, therefore, we believe that the only conviction that should be considered should be that of smuggling. Certainly indictment is no reason upon which to refuse a man the right to import merchandise. A man under indictment is not guilty and many persons indicted are acquitted. It would not be a fair proposition to put a man out of business through indictment, because if he was subsequently acquitted, his business would have been destroyed in the meantime.

Section 3, page 3, line 25; page 4, lines 1 to 4, inclusive, should be changed to read as follows:

"The Secretary of the Treasury shall revoke the license of any licensee who has been convicted for smuggling."

It would be unfair to suspend a license where a licensee has been indicted, because, as has been pointed out, he may not be convicted, and if he is acquitted, his business would have been suspended, in most instances, due to the lapse of time between indictment and trial of a criminal case, for a sufficient time to have been destroyed.

Section 4: We believe that the words "90 days" (line 9) should be changed to "one year", as it would be impossible to mark movements with a symbol within 90 days. Plates and bridges are produced in quantity and there would be a considerable supply on hand. They could not very well be marked after manufacture, and the limit of 90 days would be a substantial embargo against the importation of any watch movements made from bridges and plates on hand. It would take at least a year to mark movements in the regular course of manufacture.

We suggest that after the words "distinguishing mark or symbol" (line 17) there should be inserted, "on a bridge or plate in such manner as not to deface the movement or affect its salability."

The Secretary of the Treasury is given broad authority to make rules and regulations as to the place and the manner of marking, and we are of the opinion that there should be some limitation as to his authority. He should not be in a position to require marking of a character that would deface a fine movement and affect its salability.

In line 21, there should be substituted for "and watch parts" the words "bridges or pillar plate." Watch parts other than bridges or pillar plates are so small that they cannot possibly be marked with a distinguishing mark or symbol, as is shown by the samples which we are exhibiting.

Section 5: Line 2, page 5, the words "bridges or pillar plate" should be substituted for "watch parts" for the reason previously stated.

Section 6: We believe that there should be added to this section the following:

"The Secretary of the Treasury is hereby directed to sell at public auction any watches, watch movements, and watch parts so seized and forfeited, for a price not less than a fair value thereof, plus legal duty imposed thereon, together with all costs, including transportation and court costs, or in lieu thereof, to destroy said merchandise, after removal for governmental accounts of all economically recoverable precious stones, gold, silver, or platinum: *Provided*, That payment of compensation to informers as now provided by law shall be paid in the case of any merchandise recovered to the Government and sold at public auction, or in case of destruction of such merchandise the amount provided by law shall be determined upon a fair value thereof: *Provided, however*, That no such amount shall exceed \$50,000."

Section 7: Line 3, page 6, the time limit of "one hundred and fifty days" should be changed to "one year"; in line 12, the words "on the ninetieth day" should be changed to "after fourteen months", and in line 14, the words "ninety days" should be changed to "one year", to harmonize with the change suggested by us to the time limit of section 4, line 9.



Lines 4 and 7, page 6, we believe that the words "wholesaler or retailer" should be omitted. There are at least 25,000 outlets for watch movements in the United States, that is, at retail, namely, department stores, premium houses, hardware stores, cigar stores, novelty shops, etc. If these dealers are required to prepare inventories and are subjected to many requirements, they will cease buying foreign movements. In that event, this legislation will have the effect of seriously reducing the business of the legitimate importer.

Line 5, the words "bridges or pillar plate" should be substituted for the words "watch parts."

Lines 15, 17, 21, and 23, the words "bridges or pillar plate" should be substituted for the words "watch parts."

There is also a very important omission, as we see it, in committing absolute control over imports of watches and watch parts to the Secretary of the Treasury without any judicial review. Possibly there would be a right of review under section 514 of the Tariff Act of 1930, which provides for protests to be heard by the United States Customs Court of a decision of the collector excluding any merchandise from entry or delivery under any provision of the custom laws. However, we think that in order that there should be no doubt as to this, a section should be inserted, following section 8, providing as follows:

"Protests may be filed under section 514 of the Tariff Act of 1930 against the exclusion from entry or delivery of watches, watch movements, and watch parts, under the provisions of this Act, including the refusal of the Secretary of the Treasury to issue any license, or his revocation or suspension of any license, and the United States Customs Court and the United States Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such protests as in the case of protests under said section 514 of the Tariff Act of 1930."

Respectfully,

AMERICAN WATCH ASSEMBLERS' ASSOCIATION,

By GEORGE GRUEN, *President*.

Special committee: Roland Gsell, president G. Gsell & Co., New York, N. Y.; George Gruen, treasurer Gruen Watch Co., Cincinnati, Ohio; Ira Guilden, vice president Bulova Watch Co., New York, N. Y.; J. P. V. Heilmuller, vice president A. Wittnauer & Co., New York, N. Y.; Morris Hoffman, president Invicta-Seeland, Inc., New York, N. Y.

Dated, Washington, D. C., July 31, 1935.

Senator WALSH. Is there anybody else that desires to be heard?

Mr. BEVANS. May I just answer one question that you asked?

Senator WALSH. Certainly.

Mr. BEVANS. I think you asked one of the witnesses, a gentleman who testified here, if one of our Government agents went into a retailer's place of business under existing law and found a smuggled watch or watch movement, whether he could do anything about it?

Senator WALSH. I should have said, perhaps, a watch which might have been smuggled and nobody knew if it had been or not.

Mr. BEVANS. Smuggled merchandise may be seized at any time if it is found.

Senator WALSH. If it is known to be smuggled.

Mr. BEVANS. And warrants may be obtained on probable cause for search.

Senator WALSH. But there is no way, upon any uniform marking, to discover in any retail store what is smuggled and what is not smuggled.

Mr. BEVANS. That is correct.

#### FURTHER STATEMENT OF C. M. KENDIG

Mr. KENDIG. Mr. Gruen's remarks following mine are something in the nature of a rebuttal.

The object to this bill seems to be more technical than real. These gentlemen have given me a copy of the code of fair competition which they accepted from the National Recovery Administration.

Senator WALSH. Whom do you mean by "they"?

Mr. KENDIG. The Assemblers Association of which Mr. Gruen is president. And I think it would be interesting to note that here they voluntarily agree to do exactly what the Government is now asking them to do. They say, "That within 2 weeks after the effective date hereof, each member of the industry can register with the code authority the title under which his business is conducted and the business address, and the code authority shall assign to each member of this industry, so registered, a registration number for the exclusive use of such member."

That is their voluntary agreement, and the only difference, Mr. Chairman, is now that the Treasury Department is asking them to register with the Government instead of registering with themselves. So that it just seems that this objection is merely more technical than real.

Mr. GRUEN. So long as you brought that up, I will concur with what he has said, and I will even go further. We went further. We wanted to require our members to make monthly reports showing the stock on hand at the beginning of the month, those purchased, and the closing after the sales had been deducted. And this should be available to the Government agencies. But the difference between that was, that it was in the hands of a code authority, and the code authority was made up of members of the industry, and if we had a complaint, we could go there and say in pretty rough language, "Now, get busy and get this out", and sit on him until he did get it out in 48 hours; but you cannot do that with a Government agency. We have to await their pleasure and if we get sassy, we are liable to go to jail.

Senator WALSH. Was the reasoning for this numbering to try to detect and suppress smuggling?

Mr. GRUEN. This was to put, as they call it, a symbol. It is the same idea; yes, sir.

Mr. HESTER. Just for the purpose of the record, we might make a brief observation in connection with the provisions of the bill which authorizes the Secretary of the Treasury to prescribe rules and regulations, if we may?

Senator WALSH. Yes.

Mr. HESTER. I will ask my associate, Mr. Spingarn, to make a very brief statement on that.

#### FURTHER STATEMENT OF STEPHEN J. SPINGARN

Mr. SPINGARN. I merely wish to say, Mr. Chairman, that several of the gentlemen who testified have indicated that the Secretary might make any regulations that occurred to him, no matter how arbitrary or capricious, in connection with the enforcement of this act. In connection with that, it must be remembered that the authority of the Secretary of the Treasury to make regulations is strictly limited to the scope of the act itself. All he can do is to regulate the procedure of carrying into effect what Congress has by law prescribed.

A good example of that is the case of *Monnill v. Jones* (in 106, U. S. Rep. 466), in which a statute authorized the Secretary of the Treasury to admit animals free of duty into the United States for breeding purposes. Under the authority of that statute, the Secretary of the Treasury issued regulations which permitted animals to be brought into the United States free of duty if it was shown that they were of superior breed and would improve the stock already in the country. The Supreme Court of the United States held that that regulation was invalid because it went beyond the scope of the statutory authority of the statute under which it was promulgated, and imposed a limitation which Congress had not prescribed.

Senator WALSH. The point you make then is that regulations would have to be strictly confined to the purposes of the act?

Mr. SPINGARN. Exactly. Nor could such regulations be arbitrary or capricious.

The vesting in an administrative officer of the power to prescribe regulations for the purpose of carrying into effect the legislative intent is nothing new in the law. There is scarcely a statute which does not contain such a provision. It would be impossible for this vast Government to function if Congress could not prescribe that administrative officers would act reasonably in exercising their discretionary powers and in prescribing regulations designed to carry out the legislative intent.

Mr. SHIPE. Mr. Chairman, may I make just a short statement?

Senator WALSH. Yes.

#### FURTHER STATEMENT BY A. K. SHIPE

Mr. SHIPE. In reply to the question whether the Secretary of the Treasury may or may not make arbitrary regulations or regulations that may not be consistent with this statute, I have in mind the case that we have now where it is a question on the import of leather. The tariff act provides a 15-percent ad valorem rate of duty on smooth leather, and a 30-percent ad valorem rate of duty on grained leather, and so forth. There is a dispute with the Secretary of the Treasury on that very question.

He issued a regulation which is permitting leather to come in here to the tune of millions of feet a year, that has been known as "boarded." That comes in under the 15-percent duty.

Senator WALSH. In other words, he made a too liberal construction under the statute?

Mr. SHIPE. That is his regulation. We have a case in the District of Columbia to compel him to change it. He never has done it. It has been pending a year, and will probably be another year before it is decided.

Senator WALSH. That is a case where the regulation was too liberal, in your opinion?

Mr. SHIPE. It does not conform to the law, in my opinion.

Senator WALSH. The duty ought to be higher than what he is permitting?

Mr. SHIPE. Yes, sir.

Take section 2 of this act. This provides [reading]:

After ninety days after the enactment of this Act, no person shall, except by special permit which may be issued in his discretion by a collector of customs under such conditions as the Secretary of the Treasury may prescribe, import into the United States any watches, watch movements, or watch parts who has not been licensed for that purpose by the Secretary of the Treasury pursuant to such rules and regulations as he may prescribe.

And it also says further on [reading]:

All merchandise subject to the provisions of this Act shall be entered at such ports of entry as shall be designated by the Secretary of the Treasury.

In other words, you are giving to the Secretary of the Treasury the power and the authority to determine where this merchandise must come in—at what port.

Senator WALSH. At this point I desire to place in the record a telegram received by me from the president and secretary of the National Retail Jewelers' Association.

NEW YORK, N. Y., August 1, 1935.

Senator DAVID I. WALSH,

*Chairman Committee on Education and Labor, Senate Office Building:*

In connection with H. R. 8921 the American National Retail Jewelers Association urgently requests you to incorporate a clause making mandatory the destruction by United States customs officials of all watches, watch movements, and watch parts seized by them for nonpayment of duty upon entry into the United States and all its Territories and possessions. We are convinced, after long and painful experience, that by this method only can the smuggling of watches, watch movements, and watch parts be controlled and our own Government cease to be a party to serious injury to the watch business in the United States through its sales of seized watches, watch movements, and watch parts which flood the country at a lower price than would have been obtained by the smugglers themselves.

WILLIAM D. McNEIL,  
*President.*

CHARLES T. EVANS,  
*Secretary.*

Senator WALSH. The committee will stand adjourned.  
(Whereupon, at 3:40 p. m., the hearing was closed.)

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