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RENEGOTIATION ACT OF 1951

JULY 25 (legislative day, JULY 6), 1953.—Ordered to be printed

Mr. MILLIKIN, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 6287]

The Committee on Finance, to whom was referred the bill (H. R. 6287) to extend and amend the Renegotiation Act of 1951, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, after line 5, insert:

SEC. 2. (a) Section 105 (f) (1) of such Act is amended by striking out "$250,000" wherever it appears therein and inserting in lieu thereof the following: "$250,000, in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953".

(b) Section 105 (f) (3) of such Act is amended by inserting, in the second sentence thereof, after "the $250,000 amount" the following: ", the $500,000 amount,".

Strike out section 4 and insert in lieu thereof the following:

SEC. 5. (a) Section 106 (a) of such Act is hereby amended by striking out the period at the end of paragraph (7) and inserting in lieu thereof a semicolon, and by inserting after paragraph (7) the following new paragraph:

"(8) any contract or subcontract for the making or furnishing of a standard commercial article, unless the Board makes a specific finding that competitive conditions affecting the sale of such article are such as will not reasonably protect the Government from excessive prices. For the purpose of this paragraph—

"(A) The term 'article' includes any material, part, assembly, machinery, equipment, or other personal property; and

"(B) The term 'standard commercial article' means an article—

"(1) which is substantially identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use, prior to June 1, 1950, or

"(2) which is substantially identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer, or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, or

"(3) which is the subject of any prime contract entered into pursuant to competitive bidding.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under clause (1) or (2) shall be considered as identical in every material respect with such article with which it is so compared."

(b) The amendment made by this section shall apply only with respect to fiscal years (as defined in section 103 (h) of the Renegotiation Act of 1951) ending on or after June 30, 1953.

PURPOSE

Section 1 of the bill amends the Renegotiation Act of 1951 to extend the renegotiation authority for 1 year to December 31, 1954. The present expiration date is December 31, 1953. In addition, the bill provides other amendments to the act which are described hereafter in the report.

GENERAL STATEMENT

1-YEAR EXTENSION

Your committee considers an extension of the renegotiation law necessary, beyond the present expiration date of December 31, 1953, because of the continuing tension in international affairs. The Congress has appropriated vast sums of money which have been and will be obligated for the procurement of needed defense materials and equipment and related purposes. Substantial deliveries and other performance of these defense contracts and subcontracts will continue to be made beyond the current calendar year, so that profits will accrue to contractors, even though the funds involved may have been appropriated and obligated at earlier dates. Unless the Renegotiation Act of 1951 is extended for at least 1 year, then considerable amounts which will be received or accrued by defense contractors and subcontractors during 1954 will not be subject to renegotiation and the Government will not be adequately protected against the payment of excessive prices in the execution of the national defense program.

The 1951 act is applicable (1) to contracts and related subcontracts with departments named in section 103 (a) to the extent of amounts received or accrued on or after January 1, 1951, and (2) to contracts with departments or agencies designated by the President, to the extent of amounts received on or after the 1st day of the 1st month beginning after the date of such designation. The 1951 act is not applicable to receipts or accruals attributable to performance after December 31, 1953.

Under the bill, renegotiation will not be applicable to receipts or accruals attributable to performance after December 31, 1954.

INCREASING MINIMUM AMOUNT SUBJECT TO RENEGOTIATION

Section 2 of the bill raises the minimum amount subject to renegotiation from $250,000 to $500,000 with respect to fiscal years ending on and after June 30, 1953. This will permit the Board to concentrate on the larger cases, and therefore facilitate administration of the act

SYNTHETIC RUBBER

Section 3 of the bill amends paragraph (6) of section 106 (a), relating to mandatory exemptions, by providing that in designating classes and types of contracts which shall be exempt under this para-

graph, the Board shall consider as not having a direct or immediate connection with the national defense, contracts for furnishing materials or services to be used by the United States, a department or agency thereof in the manufacture and sale of synthetic rubbers to a private person or persons which are to be used for nondefense purposes.

The amendment is necessary to clear up an ambiguity which results from the fact that the Reconstruction Finance Corporation is one of the departments, contracts with which are subject to renegotiation under the Renegotiation Act of 1951. Contracts with the RFC include purchases of materials for the production of synthetic rubber.

However, the synthetic rubber produced in Government-owned plants is sold to private companies for the production of rubber products and only a portion of the production of such private companies ends up in actual Government procurement.

It was obviously the intention of Congress to renegotiate only those contracts having a direct and immediate connection with the national defense.

It was not intended to renegotiate purchases of materials for use in manufacturing rubber destined for ultimate civilian end use. This amendment is intended to clarify the intention of Congress that renegotiation of purchases of materials by RFC for the manufacture of synthetic rubber should apply only to the portion of such purchases that will ultimately be used by one of the Departments covered by the act. The remaining portion of such purchases should be exempt under section 106 (a) (6) of the act.

This amendment is retroactive to the effective date of the 1951 act.

PRIME CONTRACTS FOR MACHINE TOOLS

Section 106 (a) of the 1951 act restricts the renegotiability of subcontracts for durable productive equipment to a proportion of those sales equal to the ratio between 5 years and the average useful service life of the equipment. Section 4 of the bill makes this treatment applicable to prime contracts as well as subcontracts. Under the amendment, if the Government purchases for its own account a $100,000 machine tool having an estimated useful life of 20 years, the portion of the profits subject to renegotiation will be the proportion which 5 years bears to the estimated useful life, which is one-fourth, or $25,000.

Under the bill the amendment would be effective for fiscal years ending on or after June 30, 1953.

The fact that many Government purchases of machine tools at the present are for stockpiling purposes makes this amendment essential. By making sales of this type to the Government, the industry is, in effect, destroying the future market for its products because the eventual release of the Government stockpile will serve to satisfy normal demand. Thus, the amendment merely requires recognition of the fact that defense use can be expected to represent only a portion of the useful life of the equipment sold under prime contracts.

The committee understands that in World War II renegotiation, when machine tools and other durable equipment were sold to private contractors, the sale was treated as renegotiable only to the extent that tools or equipment were to be used in defense production, so that if, for example, the anticipated use in defense production was 60

percent, and in civilian production 40 percent, then 60 percent of the sale price was treated as renegotiable. In adopting section 106 (c) of the 1951 act, the committee did not intend for this percentage of use method of segregating renegotiable sales to be superseded, nor, in the committee's opinion, did the Congress so intend. The initial interpretation of the Renegotiation Board was otherwise, but after conference with the committee the Board revised its regulations to conform to the intent of Congress as the committee understood it. The committee expects that the same practice will apply under the section as amended in the bill, with respect to sales not made to or on account of the Government.

STANDARD COMMERCIAL ARTICLES

The House bill contained a permissible exemption for standard commercial articles. Your committee amendment provides for a mandatory exemption for standard commercial articles in all cases except where the Board makes a specific finding that competitive conditions affecting the sale of such articles are not such as will reasonably protect the Government against excessive prices. The committee believes that in the case of standard commercial articles there is in most cases no basis or need for renegotiation since cost and pricing experience has already been acquired and prices made in a competitive market. It is believed that in the few cases where renegotiation is necessary to insure the Government against excessive prices, the public interest will be protected by giving the Board authority to make specific findings as to the lack of proper competitive conditions in such cases. The committee amendment contains a definition of standard commercial articles. In general this is patterned after the definition of standard commercial articles in the Renegotiation Act of 1943. However, there is also included in the definition of a standard commercial article an article which is the subject of any prime contract entered into pursuant to competitive bidding. It is believed that the prices of articles furnished pursuant to a contract with the Government awarded as a result of competitive bidding will not be excessive except in rare cases and in such rare cases the exemption will not apply where the Board makes a specific finding that competitive conditions affecting the sale of such articles are such as will not reasonably protect the Government against excessive prices.

SUBSTITUTION OF PARTIES UNDER WORLD WAR II RENEGOTIATION ACT

The bill in section 6 extends for 1 additional year the time in which the United States can be substituted for the World War II Contract Price Adjustment Board in suits before the Tax Court. If this extension is not granted, a number of suits now pending in that court will be subject to dismissal on a technicality rather than on the merits. Under existing law the substitution was required to be made within 2 years after March 23, 1951, the effective date of the Renegotiation Act of 1951.

TECHNICAL EXPLANATION OF THE BILL

SECTION 1

Subsection (a) of section 102 of the Renegotiation Act of 1951 provides that title I of that act shall not apply to receipts or accruals attributable to performance after December 31, 1953. The first section of the bill would change this date to December 31, 1954.

SECTION 2

This section amends section 105 (f) of the Renegotiation Act of 1951 by striking out the minimum exemption from renegotiation of $250,000 and substituting therefor an exemption of $500,000. This amendment is applicable to fiscal years ending on or after June 30, 1953.

SECTION 3

Subsection (a) of section 106 of the Renegotiation Act of 1951 contains mandatory exemptions from renegotiation. Paragraph (6) exempts any contract which the Renegotiation Board determines does not have a direct and immediate connection with the national defense. It requires the Board to prescribe regulations designating those classes and types of contracts which are exempt and (in accordance with regulations prescribed by it) to exempt any individual contract not falling within any such class or type if it determines that such contract does not have a direct and immediate connection with the national defense.

Section 3 (a) of the bill amends paragraph (6) so as to require the Board, in designating those classes and types of contracts which shall be exempt and in exempting any individual contract under the paragraph, to consider as not having a direct or immediate connection with national defense any contract for the furnishing of materials or services to be used by the United States, a department (as defined in section 103 (a) of the Renegotiation Act) or agency thereof, in the manufacture and sale of synthetic rubbers to a private person or to private persons which are to be used for nondefense purposes. If the use by such private person or persons is partly for defense and partly for nondefense purposes, the Renegotiation Board is required to consider as not having a direct or immediate connection with national defense that portion of the contract which is determined not to have been used for national-defense purposes. The method used in making such determination is to be subject to approval by the Renegotiation Board.

The amendment made by section 3 of the bill is to be effective as if it were a part of the Renegotiation Act of 1951 on the date of its enactment.

SECTION 4

Subsection (c) of section 106 of the Renegotiation Act of 1951 provides a partial mandatory exemption for new "durable productive equipment" which is defined, in general, to mean machinery, tools, or other equipment which does not become a part of an end product. Under existing law the exemption applies to receipts and accruals

(other than rents) from subcontracts for new durable productive equipment but does not apply to receipts and accruals from contracts for the same items when furnished to the Government.

Subsections (a) and (b) of section 4 of the bill make the changes which are necessary to extend the existing exemption that applies to subcontracts so that it will also apply to contracts with the Government. Under subsection (c) of section 4 of the bill the amendments made by subsections (a) and (b) will apply only with respect to fiscal years (as defined in section 103 (h) of the Renegotiation Act of 1951) which end on or after June 30, 1953. Section 103 (h) of the act defines the term "fiscal year" to mean the taxable year of the contractor or subcontractor under chapter 1 of the Internal Revenue Code, except that where any readjustment of interest occurs in a partnership as defined in section 3797 (a) (2) of such code, the fiscal year of the partnership or partnerships involved in such readjustments is determined in accordance with regulations prescribed by the Renegotiation Board.

SECTION 5

Your committee amendments add to the list of mandatory exemptions contracts or subcontracts for the making or furnishing of a standard commercial article unless the Board makes a specific finding that competitive conditions affecting the sale of such articles are such as will not reasonably protect the Government from excessive prices. Standard commercial articles are specifically defined in section 5 of the bill.

SECTION 6

Substitution of parties, see first part of report.

CHANGES IN EXISTING LAW

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

RENEGOTIATION ACT OF 1951

SEC. 102. CONTRACTS SUBJECT TO RENEGOTIATION.

(a) IN GENERAL.—The provisions of this title shall be applicable (1) to all contracts with the Departments specifically named in section 103 (a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of January 1951, whether such contracts or subcontracts were made on, before, or after such first day, and (2) to all contracts with the Departments designated by the President under section 103 (a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of the first month beginning after the date of such designation, whether such contracts or subcontracts were made on, before, or after such first day; but the provisions of this title shall not be applicable to receipts or accruals attributable to performance, under contracts or subcontracts, after December 31, [1953] *1954*.

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SEC. 105.

(f) MINIMUM AMOUNTS SUBJECT TO RENEGOTIATION.—

(1) IN GENERAL.—If the aggregate of the amounts received or accrued during a fiscal year (and on or after the applicable effective date specified in section 102 (a)) by a contractor or subcontractor, and all persons under control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts described in section 103 (g) (1) and (2), is not more than [$250,000], *$250,000, in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953*, the receipts or accruals from such contracts and subcontracts shall not, for such fiscal year, be renegotiated under this title. If the aggregate of such amounts received or accrued during the fiscal year under such contracts and subcontracts is more than [$250,000], *$250,000, in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953* no determination of excessive profits to be eliminated for such year with respect to such contracts and subcontracts shall be in an amount greater than the amount by which such aggregate exceeds [$250,000] *$250,000, in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953.*

* * * *

(3) COMPUTATION.—In computing the aggregate of the amounts received or accrued during any fiscal year for the purposes of paragraphs (1) and (2) of this subsection, there shall be eliminated all amounts received or accrued by a contractor or subcontractor from all persons under control of or controlling or under common control with the contractor or subcontractor and all amounts received or accrued by each such person from such contractor or subcontractor and from each other such person. If the fiscal year is a fractional part of twelve months, [the $250,000] *the $500,000* amount and the $25,000 amount shall be reduced to the same fractional part thereof for the purposes of paragraphs (1) and (2). In the case of a fiscal year beginning in 1950 and ending in 1951, the $250,000 amount and the $25,000 amount shall be reduced to an amount which bears the same ratio to $250,000 or $25,000, as the case may be, as the number of days in such fiscal year after December 31, 1950, bears to 365, but this sentence shall have no application if the contractor or subcontractor has made an agreement with the Board pursuant to section 102 (c) for the application of the provisions of this title to receipts or accruals prior to January 1, 1951, during such fiscal year.

SEC. 106. EXEMPTIONS.

(a) MANDATORY EXEMPTIONS.—The provisions of this title shall not apply to—

* * * * *

(6) any contract which the Board determines does not have a direct and immediate connection with the national defense. The Board shall prescribe regulations designating those classes and types of contracts which shall be exempt under this paragraph; and the Board shall, in accordance with regulations prescribed by it, exempt any individual contract not falling within any such class or type if it determines that such contract does not have a direct and immediate connection with the national defense. *In designating those classes and types of contracts which shall be exempt and in exempting any individual contract under this paragraph, the Board shall consider as not having a direct or immediate connection with national defense any contract for the furnishing of materials or services to be used by the United States, a Department or agency thereof, in the manufacture and sale of synthetic rubbers to a private person or to private persons which are to be used for nondefense purposes. If the use by such private person or persons shall be partly for defense and partly for nondefense purposes, the Board shall consider as not having a direct or immediate connection with national defense that portion of the contract which is determined not to have been used for national defense purposes. The method used in making such determination shall be subject to approval by the Board.* Notwithstanding section 108 of this title, regulations prescribed by the Board under this paragraph, and any determination of the Board that a contract is or is not exempt under this paragraph, shall not be reviewed or redetermined by the Tax Court or by any other court or agency; or

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(c) PARTIAL MANDATORY EXEMPTION FOR DURABLE PRODUCTIVE EQUIPMENT.—

(1) IN GENERAL.—The provisions of this title shall not apply to receipts or accruals (other than rents) from *contracts or* subcontracts for new durable productive equipment, except to that part of such receipts or accruals which bears the same ratio to the total of such receipts or accruals as five years bears to the average useful life of such equipment as set forth in Bulletin F of the Bureau of Internal Revenue (1942 edition) or, if an average useful life is not so set forth, then as estimated by the Board.

[(2) DEFINITIONS.—For the purpose of this subsection—

[(A) the term "durable productive equipment" means machinery, tools, or other equipment which does not become a part of an end product acquired by any agency of the Government under a contract with a department, or of an article incorporated therein, and which has an average useful life of more than five years; and

[(B) the term "subcontracts for new durable productive equipment" does not include subcontracts where the purchaser of such durable productive equipment has acquired such equipment for the account of the Government, but includes pool orders and similar commitments placed in the first instance by a Department or other agency of the Government when title to the equipment is transferred on delivery thereof or within one year thereafter to a contractor or subcontractor.]

(2) Definition.—For the purpose of this subsection, the term "durable productive equipment" means machinery, tools, or other equipment which does not become a part of an end product, or of an article incorporated therein, and which has an average useful life of more than five years.

SEC. 201. (h) SAVINGS PROVISIONS.

* * * "but any court having on its docket a case to which the War Contracts Price Adjustment Board is a party, on motion or supplemental petition filed at any time within [two years] *three years* after the effective date of this section, showing a necessity for the survival of such suit, action or other proceeding to obtain a determination of the questions involved, may allow the same to be maintained by or against the United States."

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