

INDEX—WAR CONTRACT RENEGOTIATION

ADMINISTRATIVE MACHINERY AND PROCEDURES FOR RENEGOTIATION

delegated authority, 304 ff.; War Department's Renegotiation Division and Price Adjustment Board, 310 ff.; branches of Renegotiation Division, 311-2; membership of boards, 312-3; Price Adjustment Sections of the various technical services, 313 ff.; assignment of cases, 314; typical information, 315; initiation and conduct of renegotiation procedure, 316 ff.; agreements with contractors, 317; clearance notices, 318; settlement reports, 318; administration of agreements, 319; refunds and price reductions, 319; inability to reach agreement, 320; right of review, 321; coordination between agencies, 322; Joint Price Adjustment Board, 322; interchange of ideas and information, 323; departmental organization: army air forces, 324; chemical warfare, 326; engineers, 327; ordnance, 329; quartermaster, 330; signal corps, 330; surgeon general, 331; navy, 333; maritime commission, 335; war shipping administration, 336; treasury, 337; RFC, 337; volume, by department, 339; location of offices, 339.

AFFILIATED COMPANY

when renegotiated on consolidated basis, 277.

AGRICULTURAL COMMODITIES

proposed mandatory exemption of, 407; present discretionary exemption, 408.

Aluminum Co. of America v. Commissioner Int. Rev., 263, 265.

AMENDMENTS PROPOSED TO RENEGOTIATION ACT

general discussion, 399-422; general comment on Senate Finance Committee proposals, 400; scope of existing renegotiation, 401; raising floor to \$500,000, 402; exemptions, 402 ff.; standard commercial articles, 404; redefinition of subcontracts, non-component parts exemption, 407; agricultural commodities, 407; miscellaneous mandatory exemptions, 408; standards for determining excessive profits, 409-10; profits after taxes, 410-5; recognition of reconversion costs, 415; deductions and exclusions under Chapters 1 and 2E of I.R.C., 420; raw materials of integrated companies, 420; statutory joint price adjustment board, 421; judicial review, 421; statement to contractor of bases and reasons for administrative determination, 422; time limitations, 422.

ARGUMENTS FOR AND AGAINST RENEGOTIATION

generally, 376-98; war profit controls in other countries, 379-83; savings through renegotiation, 384-5; duplication of excess profits taxation, 385-6; savings possible through contract adjustments without compulsory renegotiation, 386-8; unequal treatment and lack of general principles, 387-9; non-compliance with fundamental legal principles, 389-95; lack of bill of particulars, 390; no

practical right of review, 391; fear of reprisal, 393; comparison with taxation standards, 394; striking a balance, 395-8.

BROKERS' FEES

agitation against, 268-70; renegotiability of payments, 270-1.

CONSTITUTIONALITY

basic legislative jurisdiction of Congress, 354-7; power to enter into contracts, 354; reaching into non-federal fields through contractual provisions, 355-7; constitutional limitations upon delegation, 357-68; contractual reservation of exercise of non-standardized administrative discretion, 358-9; distinguishing lack of standards in self-executing police regulations, 360; legal sufficiency of Act's standard, 361; substitution of formalized administrative standards, 362-5; examples of constitutional action based on indefinite standards, 365-6; "due process" of retroactive provisions, 368-75; modifying contract obligations of federal government, 368 ff.; congenital-defect contracts, 371 ff.; general conclusion concerning constitutionality, 374-5.

Contra RENEGOTIATION (see ARGUMENTS FOR AND AGAINST).

CONTRACT CLAUSES (see PRICE ADJUSTMENT CLAUSES).

CONTROL OF WAR PROFITS (see WAR PROFIT CONTROL).

COST-PLUS CONTRACTS, 188-9, 193-5, 219, 246-8, 251. Costs

allocable to renegotiable business, 287 ff.; allowable costs, 288-93; income tax law analogy, 288-9; excessive compensation, 289; taxes, 290; employee pension funds, 290; provisions for contingencies, 291; treatment of non-manufacturing expenses, 291; selling expenses and advertising, 292; state income taxes attributable to profits reduced by renegotiation, 352.

COVERAGE OF RENEGOTIATION, 262 ff., 401.

DEVELOPMENT OF RENEGOTIATION

generally, 218-34; adjunct of procurement, 218; close pricing objectives, 219, 224-7, 231; contract clauses, 219-20; contractual renegotiation, 220; exemption technique to preserve incentives, 228; early proposal of renegotiation statute, 221; services' counter-proposals, 221; over-all renegotiation, 224; periodic price adjustment clauses, 229, 233; renegotiation clause, 220, (text) 232; redetermination clause, 219, (text) 231; statutory renegotiation, 224; theories of profit recapture and theories of minimizing costs and price levels, 225-7.

Ellis v. United States, 355, 356.

ESCALATION CLAUSES, 249.

EXCESS PROFITS TAXES

as method of profit limitation, failure of, 198.

EXCESSIVE PROFITS—GUIDEPOSTS

absence of rigid formula, and reasons, 295; comparative standards, 295 ff.; pre-war company experience and base periods, 296; rejection of base periods, 296; pre-war industry experience, 296; Internal Revenue Code §722 analogies, 297; sales ratios, 297; volume of production factor, 298; industry-accomplishment standard, 298; illustrative application of standards, 298-300; consideration of efficiency, 300; significance of subcontracting, 301; the risk element, 302; cost-plus contracts, 304; general evaluation of contractor's performance, 304-5; profits after renegotiation, 305.

EXCESSIVE PROFITS

manner of elimination, 319.

EXEMPTIONS

use of discretionary exemptions to promote pricing policies, 228; general discussions, 271-4, 280-7; "final payment" and divisibility of contracts, 272, 283; raw materials, 273, 283-5; discretionary exemptions, 274, 285-6, 401-2; mandatory, 280; real estate, 285; companies subject to public regulation, 286; proposed legislation, 402 ff.; raw materials, exemption line in integrated company, 420.

FIRST WAR POWERS ACT, 251.

FLEXIBILITY

need for in profit control measures, 251-7.

FORWARD PRICING

general, 255-61; points in common with renegotiation, 255 ff.; use of renegotiation information, 257-9; clauses in renegotiation agreements, 259.

Gold Clause Cases, 371 ff.

INCENTIVES

problem of maintaining, 220, 226, 227, 229, 231, 254-5.

INTERNAL REVENUE CODE

Sec. 3806, and treatment of income and excess profits taxes in renegotiation, 342; Chapters I and 2E, exclusions and deductions applicable to renegotiation, 288; Section 722 and its relation to renegotiation, 297.

JUDICIAL REVIEW

right to, despite statutory silence, 321; legislative proposal, 421.

LIMITATIONS, STATUTE OF (see TIME LIMITS).

MARITIME COMMISSION

renegotiation machinery, 335.

Norman v. B. & O. R. R., 371.

ORDNANCE

renegotiation machinery for ordnance contracts, 329.

PATENT LICENSES

renegotiability of, 287.

POST EXCHANGES

sales to, non-renegotiable, 287.

Perry v. United States, 368 ff.

PRICE ADJUSTMENT CLAUSES, 219, 220, 229-30, 231-45, 248-51, 260.

PRICE REDUCTIONS

how effected, 319 (and see PRICING IN WAR CONTRACTS).

PRICING IN WAR CONTRACTS

interplay of uncertainty and absence of appropriate market forces, 235-6; price adjustment needs, 236; limitations upon careful buying as price regulator, 236; objectives of pricing policy, 237-9; criterion of close pricing, 237; British views, 238; pricing methods, 239-51; comparative prices, 239; factors affecting price comparisons, 240-1; use of price-movement indices, 241-3; cost analysis, 243-6; relation of cost analysis to close pricing, 246; contract clauses, 246-51; avoidance of cost-plus, 246; general price adjustment provisions, 248; periodic price adjustment, 249; escalation clauses, 249; clauses protecting against specific risks, 250; incentive contracts, 251-5; target prices, 251-4; statutory renegotiation in forward pricing, 255-61.

PRO RENEGOTIATION (see ARGUMENTS FOR AND AGAINST).

PROCUREMENT

relation to renegotiation background, 218 ff.; rise of contractual renegotiation from procurement difficulties, 219 ff.; re-approachment of statutory renegotiation and procurement, 227 ff.; use of renegotiation information and experience in procurement, 257-9; influence on prices of existence of renegotiation, 259; forward price covenants in renegotiation agreements, 259-61.

RAW MATERIALS (see EXEMPTIONS).

RECONSTRUCTION FINANCE CORPORATION AND SUBSIDIARIES

included in scope of renegotiation, 262, 276, 309.

RECONVERSION COSTS

not allowed, 291; legislative proposal for allowances, 415 ff.

REFUNDS AND PRICE REDUCTIONS

methods of eliminating excessive profits, 319.

RENEGOTIATION

over-all v. individual contract, 224 ff.; relation to forward pricing, 255-61; nature of, 277-9; horse-trading, 277; contrasted with public utility rate fixing, 278; volume, 338-9.

RENEGOTIATION ACT (see SIXTH SUPPLEMENTAL NATIONAL DEFENSE APPROPRIATION ACT, 1942).

RENEGOTIATION AND FEDERAL TAXATION

effect of renegotiation after fiscal year and filing of returns, 341; taxes paid deemed partial refund, 342; position of B.I.R., 342; sec. 3806 of I.R.C., 342; determining the taxable year, 342; effect of renegotiation on the post war refund of the

Excess Profits Tax, 343; effect of a tax credit under sec. 3806 on income for tax purposes for the prior year, 344; effect of granting a sec. 3806 tax credit upon subsequent tax refunds, 344; declared value excess profits tax, 345; coordinating renegotiating agencies and B.I.R., 346; effect of sec. 3806 on I. T. 3577 established in I. T. 3611, 347; effect on sec. 3806 of Current Tax Payment Act of 1943, 347 ff.

RESERVES

industry's post-war reserves, 418-20.

REVENUE BILL OF 1943 (see AMENDMENTS PROPOSED TO RENEGOTIATION ACT).

SIXTH SUPPLEMENTAL NATIONAL DEFENSE APPROPRIATION ACT, 1942, Sec. 403 (The Renegotiation Act):

sec. 403, generally, 223, 276, 309, 353.

sec. 403(a), 292, 361, 407.

sec. 403(b), 228, 275.

sec. 403(c): (3), 288, 352; (4), 228, 317; (5), 275; (6), 228, 271, 273, 275.

sec. 403(d), 288.

sec. 403(h), 275.

sec. 403(i)(1): 272, 273; (2), 228, 274.

STANDARDS AND PRACTICES (see also EXCESSIVE PROFITS).

fiscal period operations, 277; nature of renegotiation, 277; compared to utility rate making, 278; initial steps, 279 ff.; required data, 279 ff.; exemptions and determination of renegotiable business, 280-7; allocation of costs to renegotiable business, 287; allowable costs, 288-93; factual reports, 293; discussions with contractor, 293; standards generally, 295-305; pre-war experience and base period, 296 ff.; illustrative application of standards, 298; consideration of efficiency, 300; significance of subcontracting, 301; risks, 302; cost-plus contracts, 304; general performance, 304-5; profits after renegotiation, 305; execution of renegotiation agreement, 306; effect on working capital, 307; constitutional difficulty over lack of standards, 361 ff.; proposed amendments prescribing statutory standards for determining excessive profits, 404 ff.

SUBCONTRACTS

general discussion of renegotiability, 262-8, 280-3; analogy of subcontracts under Vinson-Trammel Act, 263-5; administrative interpretations of, 263-5; evolution of definition in drafting of legislation, 266-8; tests for determining renegotiable business, 281-3; proposed redefinition of subcontract to exempt non-component parts, 407.

TAXATION, INCOME AND EXCESS PROFITS (see RENEGOTIATION AND FEDERAL TAXATION).

TAXES, STATE INCOME

attributable to profits reduced by renegotiation, whether allowed as costs in renegotiation, 352; attitude of states toward refunds, 352; legislative proposal for disallowance, 415.

TIME LIMITS

for commencement of renegotiation proceedings, 275; legislative proposals, 422.

UNILATERAL DETERMINATION

manner of handling disagreement cases, 320.

United States v. Bethlehem Steel Co., 187, 193, 194, 221, 253, 373.

United States v. Cohen Grocery Co., 360, 364, 365.

VINSON-TRAMMEL ACT, 202-3, 221, 263, 264.

WAR PROFIT CONTROL—HISTORICAL ANALYSIS

American Legion sponsorship of bills, 200, 201, 206, 207; civil war, 190-1; Continental Congress, 189; cost-plus, 193-5; excess profits taxes, 196-9, 200-12; 100% proposal, 208; failure of top-price laws, 192; flat percentage limitations, 202-5; period between World War I and II, 199-212; price fixing attempts, 191, 195-6; McSwain Resolution, 201; Sheppard-May Bill, 207; state legislatures, 189-90; Vinson-Trammel Act, 202; War Industries Board, 193, 195-6; War Policies Commission recommendations, 201; compulsory orders, 195; World War I attempts, 192-9.

WAR PROFIT CONTROL—OBJECTIVES, 188-9, 216-7.

WAR INDUSTRIES BOARD, 193, 195, 196.

WAR SHIPPING ADMINISTRATION

included in renegotiation coverage, 262, 309; renegotiation machinery, 336.

Are You Interested in

Excess Profits Taxation?
The Correction of Youthful Offenders?
Labor in Wartime?
Governmental Tort Liability?
The Emergency Price Control Act?
Hemispheric Trade?
Consumption Taxes?
Governmental Marketing Barriers?
Combating the Loan Shark?
Alcoholic Beverage Control?
Railroad Reorganization?
Federal Income and Estate Taxation?
The Sherman Antitrust Act?
Medical Care?
The Wage and Hour Law?
Alimony?
The New Food, Drug, and Cosmetic Legislation?
Home Financing?
The Investment of Trust Funds?
Collective Bargaining under the Wagner Act?
The "Unauthorized Practice of Law" Controversy?
Farm Tenancy Legislation?
Price Discrimination and Price Cutting?
The Federal Securities Act and its Administration?
Financial Protection for the Motor Accident Victim?
The Collection of Real Property Taxes?
The Old-Age and Welfare Titles of the Social Security Act?
Unemployment Compensation?
Expert Testimony?
Migratory Divorce?
Instalment Selling?
Industrial and Group Life Insurance?
Extending Federal Powers Over Crime?
Agricultural Readjustment in the South?
Low-Cost Housing and Slum Clearance?
Protecting the Consumer of Food and Drugs?

On each of these topics, Law and Contemporary Problems has published a symposium,* dealing with the legal and with economic and administrative aspects of the subject. The list is arranged in chronological order of publication, the most recent issue being listed first.

The price per copy of the issues listed above is \$1.00, postpaid.

LAW AND CONTEMPORARY PROBLEMS

DUKE UNIVERSITY LAW SCHOOL

DURHAM, N. C.

*Tables of contents of any of the above symposia will be sent on request. The symposium dealing with the Federal Securities Act was published in two instalments.