2. PRIOR CONTRACTUAL COMMITMENTS

The regulations present serious problems with respect to work in process and commitments under investment programs which were entered into prior to January 1, 1968. Such commitments, for example, can involve purchase of additional shares of capital, the requirement to supply industrial property, services, equipment, raw materials, parts and components. Basically the question is how such commitments and contractual obligations can be honored, particularly in respect of Schedule C countries in view of the limitations imposed by the moratorium on new investments, the limit of 35% of earnings for reinvestment, the requirements for repatriation of earnings and of short-term assets, and the prohibition against satisfaction of an obligation of a U.S. parent company as a result of a guarantee.

The only relief for the foregoing problems afforded by the regulations is by exemption on a case-by-case basis. Is this administratively feasible? Any delays and uncertainties will unduly penalize and disrupt companies in the conduct of international business. Could not some of these issues better be met on a broad policy basis either by revision of the regulations or by issuance of instructions under which companies would have assurance that, under specified conditions or limits, exemptions would be granted to permit carrying out prior investment commitments?

3. REPARATION OF DIRECT INVESTMENT EARNINGS

In addition to the adverse effects of the repatriation requirements referred to above, U.S. direct investors are confronted with problems under the following situations:

(a) A direct investor is defined under Section 1000.304 as a U.S. person who owns or acquires 10% or more of the voting power or a right to 10% or more of the earnings and profits of any foreign national and is subject to the mandatory requirements of the regulations. It is impossible for a U.S. direct investor, owning as little as 10% of the stock in a foreign corporation where the remaining stockholders are foreign nationals, to repatriate funds against the will of the foreign nationals. In this connection it should be pointed out that the ability to average out repatriations within a particular schedule of countries will prove of little benefit to U.S. corporations with limited operations overseas or within a given schedule of countries.

(b) A U.S. investor having a majority position in a foreign national who is required to and does repatriate the amounts prescribed in Section 1000.202 of the regulations may be liable to a stockholder's suit by an aggrieved minority shareholder. This problem is aggravated where the U.S. investor can not repatriate all or part of the earnings of a wholly-owned foreign subsidiary and, in an attempt to average, repatriates funds from an affiliated company within the same schedule of countries to the detriment of the minority interests.

(c) Many countries prescribe partial or complete restrictions on any remittance from such countries. For example, in Finland dividends may be remitted currently only to the extent of 25% of capital stock with the balance being remitted over a five-year period. In Brazil there is an excess remittance tax ranging upwards to 60% of any remittance exceeding a prescribed limit. Other countries prohibit repatriation of current year's earnings until some time after the close of the year in which earned, while other countries may block the repatriation of funds where capital has been impaired in prior years but where the company does have a profit in the current year.

In these situations, the regulations should also provide relief from the mandatory repatriation formulas. Here, too, it should be pointed out that averaging within a particular schedule of countries will, in many instances, prove of little benefit to U.S. corportaions.

4. OPEN ACCOUNT SALES TO AFFILIATED FOREIGN NATIONALS

Expansion of U.S. exports is a fundamental objective of the U.S. program for strengthening the balance of payments. U.S. exports to foreign affiliates constitute a substantial percentage of our total exports and have increased significantly in recent years. However, Section 1000.312(d) provides that a net increase in advance upon open account to an affiliated foreign national constitutes a transfer of capital.

Limitations on net increases in open account as governed by the limitations on transfers of capital under the regulations, will inhibit the growth of U.S. exports