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An Investment Policy Analysis of the Andean Common Market

INTRODUCTION

The economic development of the Latin American nations has been slow.¹ The economies of the region have been characterized by both an unusually heavy concentration on traditional Latin American exports (such as raw materials) and a dependence relationship with more developed nations such as the United States of America and the United Kingdom.² The political disunity of the area has made any large scale uniform reaction to the problem of slow development next to impossible.³

In order to speed up economic development, the Latin American countries, inspired by the examples of the United States of America and the European Economic Community,⁴ have attempted several schemes of economic integration.⁵ It is hoped that integration will lead to a more balanced development and an independence from foreign economies.⁶

The Andean Common Market (ANCOM)⁷ is the most successful of the Latin American efforts at integration.⁸ It was born out of a dissatisfaction with the Latin American Free Trade Association

1. A. WARDLAW, *THE ANDEAN INTEGRATION MOVEMENT* 3 (1973); see, Vargas-Hidalgo, *Economic Integration, Development Planning and Sovereignty: A Latin American View*, 9 *LAW. AMERICAS* 318, 319 (1977).

2. Vargas-Hidalgo, *supra* note 1, at 318-20.

3. See *id.* at 320-21.

4. *Id.* at 321; D. MORAWETZ, *THE ANDEAN GROUP* 1 (1974). Miguel S. Wionczek has pointed out that the goals of the Latin American advocates of economic integration are hardly original. The newly independent British colonies in North America sought the same objectives through a union of states in the eighteenth century. France and Germany made similar moves for similar reasons in the nineteenth century. Wionczek, *Introduction: Requisites for Integration*, in *LATIN AMERICAN ECONOMIC INTEGRATION* 5 (M. Wionczek ed. 1966).

5. [1978] *Latin America Introduction*, 3 *INVESTING, LICENSING & TRADING CONDITIONS ABROAD* 1 (Bus. Int'l Corp.) (June 1978) [hereinafter cited as *Latin America*]; Vargas-Hidalgo, *supra* note 1, at 318-19. Examples of these schemes are the Latin American Free Trade Association (LAFTA), the Central American Common Market (CACM), the Caribbean Common Market (Caribcom), and the new Amazon Pact.

6. Vargas-Hidalgo, *supra* note 1, at 319.

7. In Spanish the group is referred to as "el Pacto Andino", "el Grupo Andino", or "el Acuerdo de Cartagena" which literally translated means "the Andean Pact", "the Andean Group", and "the Cartagena Agreement" (the agreement establishing ANCOM). In English the group is referred to as "the Andean Group", "the Andean Pact", "the Andean Common Market", or "ANCOM".

8. See notes 390-426 *infra* and accompanying text.

(LAFTA)⁹ and out of a desire by its original members to collectively improve their lot within LAFTA.¹⁰ On August 16, 1966, the representatives of Chile, Colombia, Ecuador, Peru and Venezuela signed the Declaration of Bogotá¹¹ which announced the intent of the signatory nations to form a subregional group¹² within LAFTA.¹³ These nations, joined by Bolivia in 1967, planned their approach to ANCOM by participating in a series of discussions concerning the proposed subregional organization between June 1967 and May 1969.¹⁴ The Cartagena Agreement,¹⁵ which officially established ANCOM, was signed on May 26, 1969, by all the nations present at the formation meetings except for Venezuela, which later joined the group in 1973.¹⁶ In July of 1969, LAFTA gave its official approval.¹⁷

Even with the loss of Chile in 1976,¹⁸ ANCOM represents a considerable economic bloc.¹⁹ The aggregate population of ANCOM

9. LAFTA was formed in 1960 by the Montevideo Treaty. Treaty Establishing a Free Trade Association (Montevideo Treaty), February 18, 1960, I INSTRUMENTS OF ECONOMIC INTEGRATION IN LATIN AMERICA AND IN THE CARIBBEAN 3; Tratado de Montevideo, February 18, 1960, COMPILACIÓN DE DOCUMENTOS RELACIONADOS CON EL ACUERDO DE CARTAGENA 1 (1973); Tratado de Montevideo, February 18, 1960, in [1977] J. VANEGAS, I RÉGIMEN DEL MERCADO ANDINO 104 [hereinafter cited as REGIMEN].

10. R. FONTAINE, THE ANDEAN PACT 11-12 (1977); A. WARDLAW, *supra* note 1, at 3.

11. Declaration of Bogotá, August 16, 1966, I INSTRUMENTS OF ECONOMIC INTEGRATION IN LATIN AMERICA AND IN THE CARIBBEAN 149 (1975); *Declaración de Bogotá*, August 16, 1966, COMPILACIÓN DE DOCUMENTOS RELACIONADOS CON EL ACUERDO DE CARTAGENA 25 (1973).

12. When a Latin American speaks of the "región" (region), he is referring to Latin America as a whole. When the word "subregional" is used, it simply means a subregion or part of Latin America. However, the term does have greater significance in an economic context. "Subregional" in an economic sense indicates that the described process is a part or phase in the much larger process of total Latin American economic integration.

13. E. LOW, *Origen y Evolución del Pacto Andino*, in INTEGRACIÓN ANDINA 15 (Fundación Friedrich Naumann ed. 1974); D. MORAWETZ, *supra* note 4, at 1; E. OCAMPO, EL PACTO ANDINO O ACUERDO DE CARTAGENA 16-17 (1974); [1977] RÉGIMEN, *supra* note 9, at No. 0001.

14. R. FONTAINE, *supra* note 10, at 13.

15. The Cartagena Agreement, May 26, 1969, reprinted in 8 INT'L LEGAL MATERIALS 910 (1969) [hereinafter cited as The Cartagena Agreement]. The agreement is entitled "Agreement on Subregional Integration." However, the brief title "Cartagena Agreement" or "el Acuerdo de Cartagena" was established as the official name. Garcia-Amador, *Latin American Economic Integration*, 2 LAW. AMERICAS 247-48 (1970). Latin American experts disagree as to why this title was taken. Some think the name of the city of Cartagena, Colombia was taken only because it was the site where the final agreement was worked out. EDITORIAL GLOCA PEDAGÓGICA, DIDÁCTICA, I PACTO ANDINO 7 (1973). Others see a symbolic connection to the city where Simon Bolivar's revolt against Spain started. E. OCAMPO, *supra* note 13, at 13. Bolivar had been an advocate of Latin American unity.

16. R. FONTAINE, *supra* note 10, at 13; *Latin America*, *supra* note 5, at 6. Venezuela's signature of the Cartagena Agreement was delayed by strong opposition from protectionist groups in the Venezuelan private sector. *Latin America*, *supra* note 5, at 6.

17. R. FONTAINE, *supra* note 10, at 13.

18. See notes 395-406 *infra* and accompanying text.

19. See *Latin America*, *supra* note 5, at 6.

in 1976 (excluding Chile) was 68.3 million.²⁰ The Andean Bloc's market size is 20.80,²¹ and market growth in 1977 was 36%.²² Bolivia and Ecuador, two of the ANCOM nations, ranked third and fifth in market growth in Latin America with 54% and 50% respectively.²³ Moreover, the nations of ANCOM are important exporters of both raw materials and agricultural products.²⁴ Total exports from ANCOM to the United States totaled \$6,456 million in 1977, while total United States exports to ANCOM amounted to \$5,752 million.²⁵

In order to tap ANCOM's extensive and expanding markets and to exploit the resources of the subregion, foreign investors must learn to deal with ANCOM. To successfully transact business with ANCOM, one must have a thorough understanding of ANCOM's structure, programs, policies, successes and failures. The balance of this article charts the significant elements of ANCOM for the interested foreign businessman or investor and identifies potential problem areas.

I. ANCOM'S INSTITUTIONS

The workings of ANCOM involve a variety of institutions. Several were created in the Cartagena Agreement: the Commission, the Junta, and the various advisory committees.²⁶ A number of planning

20. *Latin America*, *supra* note 5, at 21. A comparison with the three other large economic powers in the region (Argentina, Mexico, and Brazil) yields an informative result. Only Brazil with 110.1 million has a larger population than that of ANCOM. ANCOM's population is larger than that of Mexico (61.2 million), and Argentina (25.7 million). *Id.* The United Nations population projection for ANCOM in 1990 is 101.7 million, once again the second largest in the region (compared to Brazil's 165.8 million, Mexico's 97.6 million, and Argentina's 30.2 million). *Id.*

21. *Latin America's Markets: How They Compare in Size, Intensity, and Growth*, 1977 BUS. LATIN AMERICA 411. Market size is defined in the article as "the relative size of each national or subregional market as a percentage of the total Latin American market."

22. *Id.* Market growth is defined in the article as "an average of the various indicators of percentage growth over the past five years of population, energy and steel consumption, cement and electricity production, and passenger cars and trucks and buses in use."

23. *Id.*

24. Bolivia produces tin, crude petroleum, natural gas, and zinc. Colombia exports coffee, fuel oil, cotton and may soon be producing uranium. Ecuador is a producer of crude petroleum, coffee, and bananas. Peru is an exporter of copper, fish meal, zinc, and silver. Venezuela exports petroleum, and iron ore. *Mixed Outlook in Store for Key Latin American Agricultural Exports*, 1978 BUS. LATIN AMERICA 83; *Spanish Firm Ties Up Second Deal with Colombia for Uranium Development*, 1978 BUS. LATIN AMERICA 227.

25. *ANCOM-Economic Growth Continues in All Countries But Peru*, COM. AMERICA, July 31, 1978, at 5.

26. The Cartagena Agreement, *supra* note 15, ch. II.

councils were added shortly after ANCOM came into existence.²⁷ Two new organs, the Andean Reserve Fund and a yet to be named Andean tribunal, have recently been formed.²⁸ Although not officially a part of the subregional organization, both the Corporación Andina de Fomento (CAF) and the occasional crisis meetings of the foreign and economic ministers perform vital functions for ANCOM.²⁹

The Commission

The Commission³⁰ is composed of one plenipotentiary representative from each of the Member States.³¹ There is a President who serves for a term of one year.³² Meetings are held three times a year, and special sessions may be called by the President.³³

Theoretically, the Commission is the "supreme organ" of ANCOM, vested with extensive powers under the Cartagena Agreement, including the power to hear and deal with any matter of common interest to the Members.³⁴ More specifically, the Commission is empowered to formulate ANCOM's general policies and to approve rules which are indispensable to both the coordination of the Members' development plans and the conformance of the Members' economic policies.³⁵ It may also propose reforms of the Cartagena Agreement to the Member States.³⁶

The Commission's relationship with the Junta is precisely set out in the Cartagena Agreement. Members of the Junta are appointed and removed by the Commission.³⁷ The Commission issues instructions to the Junta and may delegate any powers it so desires to that body.³⁸ Finally, Junta proposals are approved, vetoed or amended by the Commission.³⁹

The will of the Commission is expressed in the form of

27. Decision 22, Third Period of Extraordinary Sessions (Nov. 14, 1970), as summarized in E. OCAMPO, *supra* note 13, at 51.

28. See notes 88-103 *infra* and accompanying text.

29. R. FONTAINE, *supra* note 10, at 26-28; A. WARDLAW, *supra* note 1, at 11, 37.

30. In the Spanish text, this institution is simply called "*La Comisión*" which means "Commission".

31. The Cartagena Agreement, *supra* note 15, art. 6.

32. *Id.* art. 9.

33. *Id.* art. 10.

34. *Id.* arts. 6-7.

35. *Id.* art. 7(a)-(b).

36. *Id.* art. 7(j).

37. *Id.* art. 7(c).

38. *Id.* art. 7(d)-(e).

39. *Id.* art. 7(f).

“Decisions”.⁴⁰ These Decisions are reached by a rather complicated voting system which attempts to resolve the conflict between the Commission’s power to act on subregional issues and the individual Member governments’ desire to safeguard their national sovereignty.⁴¹

The general voting rule requires that Decisions be adopted by an affirmative two-thirds vote, but there are broad exceptions to this rule.⁴² There is a special voting system for items contained in “Annex I” which includes proposed amendments to the Junta’s powers, approval of modifications to the Cartagena Agreement, approval of rules concerning the harmonization of national development plans and economic policies, and matters involving the acceleration of trade liberalization.⁴³ These business items may be approved by a two-thirds vote but only if no negative vote is cast.⁴⁴

Another special voting method is provided for “Annex II” items which include: the approval of lists of products to be reserved for inclusion in the Sectoral Programs for Industrial Development,⁴⁵ special rules for determining the origin of merchandise; approval of the Common Minimum External Tariff and the Common External Tariff, as well as modifications of the Common External Tariff; and the rationalization and specialization of programs not incorporated into sectoral programs.⁴⁶ Like the “Annex I” process, decisions on items in “Annex II” may only be adopted by a two-thirds affirmative vote with no negative vote cast.⁴⁷ If a negative vote is cast, the proposal is returned to the Junta for reconsideration. The Junta then has a four month period, beginning two months after the initial vote, in which to resubmit the proposal to the Commission along with any modifications.⁴⁸ The proposal then may be adopted upon resubmission if there is a two-thirds affirmative vote and if none of the States which initially voted in favor of the proposal casts a negative vote.⁴⁹

A third voting system is provided for matters listed in “Annex III” which includes any subject involving the special treatment ac-

40. *Id.* art. 6.

41. *Id.* arts. 11-12; A. WARDLAW, *supra* note 1, at 9.

42. The Cartagena Agreement, *supra* note 15, art. 11.

43. *Id.* art. 11(a); A. WARDLAW, *supra* note 1, at 9.

44. The Cartagena Agreement, *supra* note 15, art. 11(a).

45. *See* notes 165-168 *infra* and accompanying text.

46. The Cartagena Agreement, *supra* note 15, art. 11(b); A. WARDLAW, *supra* note 1, at 8-9.

47. The Cartagena Agreement, *supra* note 15, art. 11(b).

48. *Id.*

49. *Id.*

corded Ecuador and Bolivia under the Cartagena Agreement.⁵⁰ Proposals involving such subjects must be approved by a two-thirds affirmative vote so long as either Bolivia or Ecuador casts one of the affirmative votes.⁵¹

Special provisions for the appointment of Junta members are set forth in the Cartagena Agreement.⁵² Junta appointments must be unanimously approved.⁵³ However, removal is accomplished by two-thirds affirmative vote.⁵⁴

The Lima Protocol established a special voting system for the required approvals of Sectoral Programs.⁵⁵ A proposed Sectoral Program is adopted if it receives a two-thirds affirmative vote with no negative vote cast.⁵⁶ Those proposals rejected by a negative vote are returned to the Junta for consideration of the reasons for the negative vote or votes.⁵⁷ Within one to three months of the initial vote, the Junta may resubmit the proposal to the Commission.⁵⁸ The proposal is then adopted if it receives a two-thirds affirmative vote.⁵⁹

In practice the Commission's functions are not so impressive. The voting system outlined above, along with the additional requirement that Commission amendments to Junta proposals must be unanimously approved, have combined to deprive the Commission of much of its ostensible power.⁶⁰ It is much easier for the Commission to simply adopt a Junta proposal without amendment than to attempt the unanimous agreement needed for such amendment.⁶¹ Moreover, the Commission cannot simply ignore Junta proposals because the Cartagena Agreement specifically requires that the Commission consider them.⁶² As a result of these limitations, the Commission usually just responds to Junta initiatives instead of acting on its own volition.⁶³

50. *Id.* art. 11(c); A. WARDLAW, *supra* note 1, at 9.

51. The Cartagena Agreement, *supra* note 15, art. 11(c).

52. *Id.* art. 11(d).

53. *Id.*

54. *Id.* art. 11.

55. The Lima Protocol Amending the Cartagena Agreement on Andean Subregional Integration, October 30, 1976, reprinted in 16 INT'L LEGAL MATERIALS 235, 238 (1977) [hereinafter cited as Lima Protocol].

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. A. WARDLAW, *supra* note 1, at 9.

61. *Id.*

62. The Cartagena Agreement, *supra* note 15, art. 12.

63. R. FONTAINE, *supra* note 10, at 24. There was only one case from 1969 to 1973 in which the Commission acted contrary to the wishes of the Junta and its technical advisers. The

The Junta

Theoretically, the Junta is ANCOM's "technical organ" consisting of three members who serve three year terms.⁶⁴ Members may be from any Latin American nation, including non-ANCOM nations.⁶⁵ Although practice has been at variance,⁶⁶ the Junta members are required by the Cartagena Agreement to act in the common interest without being influenced by national interests.⁶⁷ Unlike the Commission, the Junta is a permanent body with its headquarters in Lima, Peru.⁶⁸

The Cartagena Agreement gives the Junta wide powers, but the supervision of both the Cartagena Agreement's implementation and the Commission's Decisions, along with the preparation and submission of proposals to the Commission are the most important.⁶⁹ The Junta is required to act unanimously, but alternative proposals may be submitted to the Commission, so Junta action has not been paralyzed by this requirement of unanimous action.⁷⁰

The Junta has proven to be much more than a mere technical body. As mentioned above, the Commission's voting system has led to the Commission simply adopting Junta proposals without amendment.⁷¹ Moreover, the Commission's membership has tended to change frequently, unlike that of the Junta whose members are usually reappointed and are difficult to remove before the expiration of their term.⁷² This fact, combined with the permanent nature of the institution, has made the Junta much more of an experienced, seasoned body than the Commission.⁷³

Junta's proposal for the Foreign Investment Code was rejected, as it appeared that the Junta's proposal was unacceptable to all of the Member States. A. WARDLAW, *supra* note 1, at 9.

64. The Cartagena Agreement, *supra* note 15, art. 13. In the performance of its duties, the Junta is aided by a large permanent technical staff and by private advisors. *Id.* art. 16; A. WARDLAW, *supra* note 1, at 9.

65. The Cartagena Agreement, *supra* note 15, art. 14.

66. R. FONTAINE, *supra* note 10, at 24.

67. The Cartagena Agreement, *supra* note 15, art. 14.

68. *Id.* art. 18; A. WARDLAW, *supra* note 1, at 22. The Junta address is: Junta del Acuerdo de Cartagena, Esquina Avenidas Paseo de la República y Andrés Aramburu, Casilla 3237, Lima, Perú, *Latin America*, *supra* note 5, at 7.

69. The Cartagena Agreement, *supra* note 15, art. 15(a), (c).

70. The Cartagena Agreement, *supra* note 15, art. 17; A. WARDLAW, *supra* note 1, at 10.

71. See notes 60-63 *supra* and accompanying text.

72. A. WARDLAW, *supra* note 1, at 10.

73. *Id.*

The Advisory Committees

ANCOM has advisory committees to aid the organization in performing its functions. The Cartagena Agreement provides for two such committees: the Consultative Committee and the Economic-Social Advisory Committee.⁷⁴

The Consultative Committee, with members drawn from the Member States, is the organ through which the Members are to maintain close ties with the subregional organization.⁷⁵ Its official duties are to advise the Junta, to collaborate with the Junta when requested, and to analyze the Junta's proposals upon the Junta's request.⁷⁶ The opinions of the Consultative Committee members are given in the form of reports to both the Commission and the Junta.⁷⁷ The Consultative Committee has not been important to date. Its function is only advisory, and the Commission and Junta have not been eager to request its assistance.⁷⁸

The Economic-Social Advisory Committee is composed of three members selected by subregional labor organizations and three members elected by managerial bodies in the subregion.⁷⁹ Each member serves for a term of two years.⁸⁰ The Economic-Social Advisory Committee meets in regular session once a year, but the Commission may call special sessions.⁸¹

The Commission's Decision 17 sets out the Economic-Social Advisory Committee's duties.⁸² The Committee is to advise the Commission and Junta when they so request and is allowed to offer its opinion to the Junta or Commission on any subregional issue upon its own initiative.⁸³

Like the Consultative Committee, the Economic-Social Advisory Committee has not proven to be of great importance. The Commission and Junta have simply not requested its advice on a frequent basis.⁸⁴ During the chaotic and important first eighteen

74. The Cartagena Agreement, *supra* note 15, ch. II, § C. The more accurate translation of the Spanish is "Consultative Committee", however, it is also referred to in English as the Advisory Committee.

75. *Id.* art. 19.

76. *Id.* art. 21.

77. *Id.*

78. A. WARDLAW, *supra* note 1, at 10.

79. The Cartagena Agreement, *supra* note 15, art. 22; A. WARDLAW, *supra* note 1, at 10.

80. A. WARDLAW, *supra* note 1, at 10.

81. *Id.*

82. Decision 17, First Period of Extraordinary Sessions (April 14, 1970), as summarized in E. OCAMPO, *supra* note 13, at 51.

83. A. WARDLAW, *supra* note 1, at 10.

84. *Id.* at 11.

months of ANCOM's existence, the Commission did not request the Committee to meet even once.⁸⁵

Planning Councils

Andean economic integration requires the coordination of the Member States' development plans. After a year of operation, the Commission decided to create a series of planning councils to aid in this task: the official Planning Council, the Monetary and Exchange Council, the Financing Council, the Fiscal Policy Council, and the Foreign Trade Council.⁸⁶

The Andean Reserve Fund

After over two years of discussion and delay, the Andean Reserve Fund⁸⁷ finally began to function in July of 1978.⁸⁸ Its official functions are to help the Member States with their chronic balance of payments problems, to help in the harmonization of the Members' monetary policies, to improve the liquidity of investments made from the Members' external reserves, and to act as guarantor of loans made to Member States from third parties.⁸⁹ Unofficially, the Fund has two other aims. First, it is hoped that the Fund will operate to show solidarity among the Members.⁹⁰ Second, ANCOM officials have expressed hope that at a later time the Fund will grow into a Latin American common fund which will be able to help the nations of the region decrease their dependence on the International Monetary Fund.⁹¹

The Fund has a defined structure. Management of the Fund will be handled by a board of directors composed of the Members' central bank presidents and will be headed by an executive presi-

85. *Id.*

86. Decision 22, Third Period of Extraordinary Sessions (November 14, 1970), as summarized in E. OCAMPO, *supra* note 13, at 51; Vargas-Hidalgo, *supra* note 1, at 336.

87. The sources mention two Spanish names for this organ: *el Fondo Andino de Reservas* (literally meaning the Andean Fund of Reserves) and *el Fondo Monetario Andino* (literally meaning the Andean Monetary Fund). In English it is always referred to as the Andean Reserve Fund.

88. *Andean Group's Reserve Fund Starts Operating*, 6 LATIN AMERICA ECON. REP. 217 (1978) [hereinafter cited as *Andean Group's Reserve Fund*]; *Andean Fund Is Born*, 1978 BUS. LATIN AMERICA 236 [hereinafter cited as *Andean Fund*]; *Newsbrief-Andean Group*, 4 LATIN AMERICA ECON. REP. 33 (1976) [hereinafter cited as *Newsbrief*—Feb. 27, 1976]; *Newsbrief-Andean Group*, 4 LATIN AMERICA ECON. REP. 184 [hereinafter cited as *Newsbrief*—Nov. 26, 1976].

89. *Andean Fund*, *supra* note 88, at 236; *Newsbrief*—Nov. 26, 1976, *supra* note 88, at 184.

90. *Andean Fund*, *supra* note 88.

91. *Andean Group's Reserve Fund*, *supra* note 88.

dent.⁹² An assembly whose membership is drawn from the finance and treasury ministers of their representatives has also been provided for.⁹³ The Fund will be headquartered in Bogotá, Colombia.⁹⁴

The Fund's capital is to reach \$240 million within four years.⁹⁵ Colombia, Peru and Venezuela are each to provide \$60 million in four yearly payments.⁹⁶ Bolivia and Ecuador must contribute only \$30 million each.⁹⁷

At this point, Peru seems to be the most likely candidate for the first assistance to be given by the Fund.⁹⁸ Peru will be able to receive as much as \$37.5 million to help remedy its current economic ills.⁹⁹

The Andean Tribunal

An Andean tribunal¹⁰⁰ is another recent addition to ANCOM's organizational structure. Although the tribunal was only created in September of 1978, it had been clear since 1973 that such a body was necessary.¹⁰¹ Disagreements between the Members have taken up more and more of the time of ANCOM officials, and those disagreements have grown from relatively minor affairs to major and disruptive arguments.¹⁰² The tribunal will interpret measures taken by the officials, consider claims growing out of ANCOM agency decisions, and settle disputes between Member States.¹⁰³

Meetings of the Foreign and Economic Ministers

Although the Cartagena Agreement did not provide for the meetings of the national foreign and economic ministers, these

92. *Andean Fund*, *supra* note 88.

93. *Id.*

94. *Id.*

95. *Andean Group's Reserve Fund*, *supra* note 88; *Andean Fund*, *supra* note 88.

96. *Andean Group's Reserve Fund*, *supra* note 88; *Andean Fund*, *supra* note 88.

97. *Andean Group's Reserve Fund*, *supra* note 88; *Andean Fund*, *supra* note 88.

98. *Andean Group's Reserve Fund*, *supra* note 88.

99. *Id.*

100. Sources do not use the same terminology for the court. Some merely refer to the court as an Andean tribunal. One source called the court the "Supreme Court of Andes States." See notes 101 and 102.

101. *Andean Justice*, 2 *LATIN AMERICA ECON. REP.* 51 (1978) [hereinafter cited as *Andean Justice*]; Orrego-Bicuna and Tolosa, *Latin American Economic Integration*, 5 *LAW. AMERICAS* 124, 126-27 (1973) [hereinafter cited as *Subregional Integration Agreement 1973*].

102. *Andean Justice*, *supra* note 101, at 51; *Andean Pact Advances*, 2 *LATIN AMERICA ECON. REP.* 277 (1978).

103. *Andean Justice*, *supra* note 101, at 51; *Andean Pact Advances*, 2 *LATIN AMERICA ECON. REP.* 277 (1978); *Organizations—Andean Pact*, 1978 *BULL. LEGAL DEV.* 182.

meetings have come to play a vital role in ANCOM's operations.¹⁰⁴ It must be remembered that the Commission members are not of cabinet rank.¹⁰⁵ They are, therefore, limited as to their ability to commit their governments beyond the instructions given them.¹⁰⁶ The foreign and economic ministers do have authority, however, to commit their nations to a certain authorized course of action.¹⁰⁷ Thus, when the political problems of integration have reached crisis level, the meetings of the foreign and economic ministers, not the Commission, have been able to work out solutions that allow matters to progress.¹⁰⁸ Moreover, the Commission's national representatives usually follow decisions reached at these meetings if their foreign or economic ministers concur.¹⁰⁹

II. THE ANDEAN DEVELOPMENT CORPORATION

The Andean Development Corporation (CAF)¹¹⁰ is not a true part of ANCOM.¹¹¹ However, the Andean nations realized at an early stage in ANCOM's development that a reliable source of financing for the various ANCOM and Member projects would have to be established.¹¹² Consequently, months before the Cartagena Agreement was approved, the Andean nations signed the Agreement Establishing The Andean Development Corporation (CAF Agreement).¹¹³ The CAF's purposes and functions are set forth in the CAF

104. R. FONTAINE, *supra* note 10, at 24-25; A. WARDLAW, *supra* note 1, at 11.

105. R. FONTAINE, *supra* note 10, at 25; A. WARDLAW, *supra* note 1, at 11.

106. A. WARDLAW, *supra* note 1, at 11.

107. *Id.*

108. *Id.* The crisis-solving nature of these meetings can be illustrated by examples. The foreign ministers first met on November 22-24, 1969, in order to start ANCOM's actual operation. Basic issues (such as the designation of Lima as the Junta's seat, the composition of the Junta, and the ambassador status of Junta members) were settled. On July 30-31, 1970, the foreign and economic ministers met to discuss foreign investment policy and Venezuela's admission to ANCOM. The foreign ministers met once again on March 12, 1971, to endorse the controversial Foreign Investment Code. *Id.* The economic ministers convened once again in emergency session on April 10, 1976, which resulted in compromise amendments to the Cartagena Agreement (Decision 101). *Eleventh Hour Rescue for Andean Group*, 4 LATIN AMERICA ECON. REP. 61 (1976). In June-July 1976, the foreign ministers met to discuss the worsening problems with Decision 24. *News Roundup—Andean Group*, 4 LATIN AMERICA ECON. REP. 100 (1976).

109. A. WARDLAW, *supra* note 1, at 11.

110. The Spanish term for this organ is *Corporación Andina de Fomento* which is abbreviated as "CAF." R. FONTAINE, *supra* note 10, at 27. In English it is usually referred to as "the Andean Development Corporation" or "the Andean Development Bank." The CAF was established in Caracas, Venezuela. *Latin America*, *supra* note 5, at 11. Further, Caracas is CAF's headquarters. R. FONTAINE, *supra* note 10, at 26.

111. R. FONTAINE, *supra* note 10, at 26.

112. A. WARDLAW, *supra* note 1, at 37.

113. Agreement Establishing the Andean Development Corporation, February 7, 1968,

Agreement.¹¹⁴ The Corporation aims to further subregional integration by encouraging the utilization of economic opportunities and resources within the subregion.¹¹⁵ Production and service enterprises are to be created and existing enterprises are to be expanded and modernized.¹¹⁶ These goals are to be accomplished through the undertaking of investment opportunity studies, the dissemination of the results of such studies to the Members, the furnishing of technical and financial assistance for the preparation and realization of multinational and complementary projects, the acquisition of both foreign and domestic credit, and the granting of loans to Members.¹¹⁷

In the performance of its duties, the CAF is subject to certain restrictions by charter.¹¹⁸ Financing for projects involving Peru, Colombia or Venezuela can only be given if those projects involve the production of goods scarce in the subregion or if they include the participation of more than one Member.¹¹⁹ In contrast, the less developed nations, Bolivia and Ecuador, may be given loans for any developmental project.¹²⁰

The CAF is organized in corporate form, having officers, a Board of Directors, and shareholders.¹²¹ The nature of CAF shareholders varies according to class.¹²² Series A shares may belong only to the Member States or to a Member-designated private or public institution; Series B may be owned by either the public or private sectors of any ANCOM nation;¹²³ and Series C stock may be issued at the Board's discretion for sale to non-ANCOM investors.¹²⁴ Shareholders' regular meetings are held once a year, but special meetings may be called.¹²⁵

The Board of Directors consists of ten Members each serving

reprinted in 8 INT'L LEGAL MATERIALS 940 (1969) [hereinafter cited as CAF Agreement]; REGIMEN, *supra* note 9, at 303.

114. CAF Agreement, *supra* note 113, arts. 3 and 4.

115. *Id.* art. 3.

116. *Id.*

117. *Id.* art. 4.

118. *Andean Loan Body Gets New Financial Muscle*, 1975 BUS. LATIN AMERICA 60, 61 [hereinafter cited as *Loan Body Gets Muscle*].

119. *Id.*

120. *Id.*

121. CAF Agreement, *supra* note 113, chs. II-V; A. WARDLAW, *supra* note 1, at 37-38.

122. CAF Agreement, *supra* note 113, ch. II; A. WARDLAW, *supra* note 1, at 37-38.

123. CAF Agreement, *supra* note 113, art. 5(a),(b).

124. *Id.* art. 6(c); A. WARDLAW, *supra* note 1, at 38. The purpose of the Series "C" share was to raise the money necessary to complete the original capitalization, over and above Member contributions.

125. CAF Agreement, *supra* note 113, arts. 11-12.

three year terms.¹²⁶ The Series A and Series B shareholders each elect five Directors.¹²⁷ The Board chooses officers and both determines and administers the CAF's policies.¹²⁸

The Executive President, elected by the Board for a term of five years,¹²⁹ is the most important officer. He is the CAF's legal representative who has the power to directly manage and administer the CAF.¹³⁰ Although he may not vote, he does have the right to participate in Board meetings.¹³¹

The authorized capital of CAF is now \$400 million.¹³² The original \$100 million was contributed by the Member States.¹³³ The remaining capital has been received from different sources. Technical assistance grants have been given to the CAF by the UN Development Program (\$367,500), the Canadian Government (\$500,000), and the Finnish Government (\$256,000).¹³⁴ Loan capital has been obtained from the International Development Bank (\$5.4 million), the United States Agency for International Development (\$15 million), the Brazilian Government (\$6 million), the Mexican Government (\$5 million), the Export-Import Bank of Japan (\$10 million), and the Finnish Government (in the form of a 1 million Finnish mark credit).¹³⁵ It should be noted that foreign capital participation is encouraged by CAF.¹³⁶

The CAF's performance to date has been somewhat disappointing but some of the blame for its failures may be placed elsewhere. The financing of the sectoral programs was designated as one of the CAF's prime goals, but only three of these programs have been approved by the Commission.¹³⁷ Moreover, until 1975 the CAF had

126. *Id.* art. 23.

127. *Id.* art. 24. The text of the agreement calls for six directors elected by the Series A Shareholders, each Member nation appointing a director. Since Chile's withdrawal in 1977, there are only five directors. See *Chile Withdraws from the Andean Development Corporation*, 16 INT'L LEGAL MATERIALS 1585 (1977).

128. CAF Agreement, *supra* note 113, art. 27.

129. *Id.* arts. 27, 32.

130. *Id.* art. 31.

131. *Id.* art. 31(c).

132. *Loan Body Gets Muscle*, *supra* note 118, at 60.

133. CAF Agreement, *supra* note 113, ch. II. Each Member purchased one share of Class "A" stock at \$1 million each. In addition, each Member purchased a number of Class "B" shares valued at \$5,000 each. Colombia, Chile, Peru and Venezuela took 900 shares each; Bolivia and Ecuador, 100 shares. *Id.* arts. 5-6; A. WARDLAW, *supra* note 1, at 37.

134. *Loan Body Gets Muscle*, *supra* note 118, at 61.

135. *Id.*; *News Roundup-Andean Group*, 3 LATIN AMERICA ECON. REP. 104 (1975); *Newsbrief-Andean Group*, 3 LATIN AMERICA ECON. REP. 145 (1975).

136. R. FONTAINE, *supra* note 10, at 26.

137. See notes 179-180 & 416-19 and accompanying text.

an authorized capital of only \$100 million.¹³⁸ This relatively small sum was inadequate for financing anything but the smaller projects.¹³⁹

CAF must, however, bear much of the blame. It has shown a lack of courage by avoiding any actions which would even arguably alienate any of the Members.¹⁴⁰ In addition, a lack of proper planning has at times been demonstrated. The subregion desperately needs a boost in its physical integration (intra-regional communications and transportation),¹⁴¹ yet CAF's plans for physical integration projects have generated little or no enthusiasm.¹⁴²

The CAF's failures, however, should not be overstated. Like other aspects of the Andean economic integration scheme, the aims of the CAF were rather optimistic and ambitious. It is, therefore, not surprising that the CAF has failed to live up to these expectations.¹⁴³ Within its limits, the CAF has done some admirable work in financing small to medium projects.¹⁴⁴

III. ANCOM'S PLAN

ANCOM has a comprehensive plan for facilitating subregional integration.¹⁴⁵ This program may be broken down into four basic parts: the common external tariff (CET),¹⁴⁶ trade liberalization, Sectoral Programs of Industrial Development,¹⁴⁷ and the control of foreign investment within the subregion.

138. *Loan Body Gets Muscle*, *supra* note 118, at 60; A. WARDLAW, *supra* note 1, at 37-38.

139. See R. FONTAINE, *supra* note 10, at 27. After the capital was raised to \$400 million, the CAF contributed \$124 million to construct only one road. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* For instance, in 1974, the CAF offered to buy a number of Boeing airliners to rent to Member nations. By 1977 only one had been rented. *Id.*

143. See *id.* at 27-28.

144. Some figures will illustrate the CAF's work. In 1974, the CAF loaned \$100 million for 73 projects within the Member States. *News Roundup—Andean Group*, 3 *LATIN AMERICA ECON. REP.* 84 (1975). The two biggest recipients were Peru (\$27 million) and Chile (\$23 million). *Id.* In 1975, Chile received \$5 million, loaned to the Central Bank of Chile to stimulate Chilean exports; Bolivia received a total of \$35.7 million for various development projects. *Newsbriefs—Andean Group*, 3 *LATIN AMERICA ECON. REP.* 184 (1975). In 1978, CAF plans to loan \$71 million to the Members. Colombia is to receive \$38.5 million for an oil refinery. Ecuador has been assigned \$9.5 million for a textile company, timber mill, and palm oil project. Peru is to receive a total of \$23 million to promote economic integration and non-traditional exports. *Briefcase—Andean Group*, 6 *LATIN AMERICA ECON. REP.* 103 (1978).

145. R. FONTAINE, *supra* note 10, at 14-15.

146. See notes 148-56 *infra* and accompanying text.

147. See notes 179-98 *infra* and accompanying text.

Common External Tariff

In the Cartagena Agreement, the Member States pledged the development of the CET in order to produce subregional development.¹⁴⁸ This CET will apply to imports from all non-ANCOM nations, even those belonging to LAFTA.¹⁴⁹

The establishment of the CET is a two step process.¹⁵⁰ The first step began in 1970 when the Commission established minimum common external tariffs for certain broad classes of goods.¹⁵¹ From 1971 until the end of 1975, Members who had lower tariffs raised them in yearly installments to at least the minimum stated level.¹⁵² The second stage is now in progress.¹⁵³ The final CET levels are to be determined by the end of 1979 and are to be complied with over a period lasting from 1980 to 1983 for Colombia, Peru, and Venezuela, and from 1980 to 1989 for Bolivia and Ecuador.¹⁵⁴ These CET levels will be expressed in terms of a minimum and maximum.¹⁵⁵ A tariff within the range allowed by the minimum and maximum will be deemed in compliance.¹⁵⁶

Trade Liberalization

The liberalization of intra-ANCOM trade is a vital part of the ANCOM plan, designed to deal with both non-tariff barriers (NTBs)¹⁵⁷ and tariff barriers.¹⁵⁸

Under the Cartagena Agreement, the NTBs were to be removed at the end of 1970,¹⁵⁹ so obviously all Member States already should be in compliance. However, in practice the NTBs still pose a prob-

148. The Cartagena Agreement, *supra* note 15, ch. VI.

149. *Id.* art. 62; *Latin America*, *supra* note 5, at 12.

150. The Cartagena Agreement, *supra* note 15, ch. VI; *Latin America*, *supra* note 5, at 12.

151. The Cartagena Agreement, *supra* note 15, art. 63; *Latin America*, *supra* note 5, at 12.

152. The Cartagena Agreement, *supra* note 15, art. 64; *Latin America*, *supra* note 5, at 12.

153. *Latin America*, *supra* note 5, at 12.

154. *Id.*

155. *Id.*

156. *Id.*

157. The Cartagena Agreement, *supra* note 15, arts. 41-43; R. FONTAINE, *supra* note 10, at 15; *Latin America*, *supra* note 5, at 12. Non-tariff barriers include such things as prior deposit requirements, import licenses and the manipulation of quotas. R. FONTAINE, *supra* note 10, at 15.

158. The Cartagena Agreement, *supra* note 15, ch. V; R. FONTAINE, *supra* note 10, at 15; *Latin America*, *supra* note 5, at 11.

159. The Cartagena Agreement, *supra* note 15, art. 46; *Latin America*, *supra* note 5, at 12.

lem in some ANCOM States.¹⁶⁰

The elimination of tariff barriers is a very complicated process under the Cartagena Agreement, as amended by the Lima Protocol.¹⁶¹ The process involves a number of goods lists established by the Commission pursuant to Junta proposals.¹⁶² One of these lists was incorporated by reference from the previously established Common Schedule of LAFTA.¹⁶³ These items started to be freely traded among ANCOM nations in April of 1970.¹⁶⁴

Another products list includes items which the Commission has marked for possible inclusion in the Sectoral Programs for Industrial Development (SPID) which seek to identify heavy industries important to the subregion and to assign components thereof to the individual members.¹⁶⁵ Items will remain on this list until they have been included in a SPID or dropped from the list.¹⁶⁶ Those items dropped from the list which are produced in the subregion will then be subject to the automatic or progressive tariff cutting program discussed below.¹⁶⁷ Those goods dropped which are not produced in the region will be subject to immediate trade liberalization.¹⁶⁸

Two of the lists were constructed specifically to give preference to underdeveloped Bolivia and Ecuador.¹⁶⁹ The first includes goods not produced in the region but reserved for possible production in Bolivia or Ecuador.¹⁷⁰ The second is a list of goods for which Bolivia

160. *Latin America*, *supra* note 5, at 12.

161. The Cartagena Agreement, *supra* note 15, ch. V; Lima Protocol, *supra* note 54, art. 1; R. FONTAINE, *supra* note 10, at 15.

162. The Cartagena Agreement, *supra* note 15, arts. 46-60; R. FONTAINE, *supra* note 10, at 15-16; A. WARDLAW, *supra* note 1, at 17-18.

163. The Cartagena Agreement, *supra* note 15, art. 49; A. WARDLAW, *supra* note 1, at 17. At present there are 175 items on the only installment of the LAFTA Common List successfully negotiated. *Latin America*, *supra* note 5, at 4. Some sample items on the LAFTA list which are also important in ANCOM are bananas, cacao beans, cacao powder, unroasted coffee, copper ore, refined copper, long-staple cotton, fish meal, and semi-refined fish oil. II RÉGIMEN, *supra* note 9, at 332; A. WARDLAW, *supra* note 1, at 44.

164. A. WARDLAW, *supra*, note 1, at 17.

165. The Cartagena Agreement, *supra* note 15, art. 47-48; R. FONTAINE, *supra* note 10, at 16; *Latin America*, *supra* note 5, at 11; A. WARDLAW, *supra* note 1, at 20. Some 300 items have been placed on this list.

166. The Cartagena Agreement, *supra* note 15, art. 47-48; A. WARDLAW, *supra* note 1, at 20.

167. The Cartagena Agreement, *supra* note 15, art. 53(b); A. WARDLAW, *supra* note 1, at 20.

168. The Cartagena Agreement, art. 53(a); A. WARDLAW, *supra* note 1, at 20.

169. The Cartagena Agreement, *supra* note 15, arts. 50-51; A. WARDLAW, *supra* note 1, at 18.

170. The Cartagena Agreement, *supra* note 15, arts. 50-51; A. WARDLAW, *supra* note 1, at 18.

and Ecuador obtained duty-free access to Colombia, Peru and Venezuela.¹⁷¹

Those goods not produced in the region and not reserved for Bolivia and Ecuador are on a special list.¹⁷² Free trade in these items started in February of 1971.¹⁷³

Under the Cartagena Agreement, each Member State was allowed to claim exceptions from the trade liberalization program.¹⁷⁴ Goods on the exception list will not be freely traded until 1988 for Colombia, Peru and Venezuela and 1993 for Bolivia and Ecuador.¹⁷⁵

Items not included on the above-mentioned lists come within the progressive or automatic tariff cutting program under which the tariffs on such products are gradually reduced until totally eliminated.¹⁷⁶ Colombia, Peru and Venezuela must complete the process by 1983; Ecuador and Bolivia by 1988.¹⁷⁷ The Members have been faithful to this program even though reductions sometimes are made several months after the scheduled times and local officials are sometimes uninformed about the reductions.¹⁷⁸

The Sectoral Programs of Industrial Development

The Sectoral Programs of Industrial Development (SPIDs)¹⁷⁹

171. A. WARDLAW, *supra* note 1, at 18.

172. *Id.* at 17.

173. *Id.*

174. The Cartagena Agreement, *supra* note 15, art. 55; R. FONTAINE, *supra* note 10, at 16; *Latin America*, *supra* note 5, at 12; A. WARDLAW, *supra* note 1, at 19-20. Bolivia was allowed 350 items (plus 50 tariff subpositions); Colombia 250 items; Ecuador 600 items; Peru 350 items; and Venezuela 236 items. *Latin America*, *supra* note 5, at 12.

175. The Cartagena Agreement, *supra* note 15, art. 55; R. FONTAINE, *supra* note 10, at 16; *Latin America*, *supra* note 5, at 16; A. WARDLAW, *supra* note 1, at 19-20.

176. The Cartagena Agreement, *supra* note 15, art. 52; R. FONTAINE, *supra* note 5, at 11; A. WARDLAW, *supra* note 1, at 21-22. In 1974 this program encompassed 45% of the intra-ANCOM trade items. *Latin America*, *supra* note 1, at 11.

177. The Cartagena Agreement, *supra* note 15, art. 52; Lima Protocol, *supra* note 54, art. 7; R. FONTAINE, *supra* note 10, at 15; *Latin America*, *supra* note 5, at 11.

178. *Latin America*, *supra* note 5, at 11.

179. It should be noted that some experts believe that the idea of SPIDs can be traced to LAFTA's complementation agreement scheme and the Central American Common Market's integration industries concept. Furnish & Atkin, *The Andean Group's Program For Industrial Development of the Metalworking Sector: Integration With Due and Deliberate SPID*, 7 *LAW AMERICAS* 29, 37 (1975). The LAFTA complementation agreement is a vaguely defined device by which the industrial policies of the different LAFTA nations are coordinated and harmonized. *Id.* at 32. Such an agreement is simply an individually negotiated contract in which the signors agree to cut the tariffs of specific goods which will be used in an industry. *Id.* at 32-33; *Latin America*, *supra* note 5, at 4. The integrated industry approach of the Central American Common Market was essentially an import-substitution scheme in which for ten years the duty-free importation of raw materials and intermediate goods was allowed, and at the same time exclusive access and exclusive external tariff protection was

were meant to provide a solution to a problem which the ANCOM members felt was keeping the subregion economically backward.¹⁸⁰ The development of heavy industry was seen to be the key to advanced economic development in the Andean region,¹⁸¹ yet none of the Andean States had the minimum market size necessary to support such industry.¹⁸² Furthermore, none of the individual nations had the capital to develop heavy industry by itself.¹⁸³ As a result, the subregion witnessed the growth of inefficient and undercapitalized heavy industry projects which had little or no chance of success.¹⁸⁴

The SPID idea is essentially a joint planning concept whereby existing industries are expanded, and new industries created, by distributing the different facets of a subregion-wide industry to different Member States.¹⁸⁵ The Members receive what is essentially a rights monopoly.¹⁸⁶

The theory of the SPID is that the subregion as a whole has the market size sufficient to supply the economy of scale necessary to support heavy industry.¹⁸⁷ Theoretically, the economy of scale will also allow the diversification of production and the maximum use of the subregion's resources.¹⁸⁸ Lower production costs and higher investment returns are the results hoped for.¹⁸⁹ An equitable distribution of the benefits of the heavy industrial development is one further desired result of the SPIDs.¹⁹⁰

An established procedure for the creation of SPIDs is provided in the Cartagena Agreement.¹⁹¹ The Junta initially proposes a pro-

given to the concerned industry. Furnish & Atkin, *supra*, at 33. It is obviously true that the complementation agreement and the integrated industry ideas share certain features with the SPID concept. They are all economic coordination and development schemes. They all take advantage of subregional or regional planning. However, the SPID approach is somewhat more ambitious. ANCOM has built upon the sad experiences of LAFTA and the Central American Common Market in planning the SPID program. *Id.* at 32-33.

180. R. FONTAINE, *supra* note 10, at 16-17; Furnish & Atkin, *supra* note 179, at 35-36.

181. R. FONTAINE, *supra* note 10, at 17.

182. *Id.*; Furnish & Atkin, *supra* note 179, at 35-36.

183. R. FONTAINE, *supra* note 10, at 17.

184. *Id.*

185. The Cartagena Agreement, *supra* note 15, ch. IV; Furnish & Atkin, *supra* note 179, at 39-40; A. WARDLAW, *supra* note 1, at 12-14.

186. Furnish & Atkin, *supra* note 179, at 42.

187. R. FONTAINE, *supra* note 10, at 17; Furnish & Atkin, *supra* note 179, at 35.

188. The Cartagena Agreement, *supra* note 15, art. 32; Furnish & Atkin, *supra* note 179, at 36.

189. Furnish & Atkin, *supra* note 179, at 36.

190. The Cartagena Agreement, *supra* note 15, art. 32(e).

191. *Id.* arts. 35-40; Furnish & Atkin, *supra* note 179, at 39-40; A. WARDLAW, *supra* note 1, at 13-14.

gram which is then submitted to the Commission for approval.¹⁹² In forming a proposal, the Junta is to include the product name, joint programming plans, plans for financing the project, and the program's time frame.¹⁹³ If the SPID involves existing industries, the Junta must ration merchandise production according to the following criteria: existing installation capacities; the technical and financial need for installation, expansion, modernization or preservation of the plants; manpower requirements; the possibilities of agreement for horizontal combination in specialization among companies in the same industry; and the possibility of inter-enterprise cooperation in trade, research and technology.¹⁹⁴ Reports on the SPID proposals must be made to the Commission at least once a year.¹⁹⁵

As will be discussed more fully later,¹⁹⁶ progress on the SPID has been slow.¹⁹⁷ Only the petrochemical, metalworking and automotive programs have been approved.¹⁹⁸

The Control of Foreign Investment

The designers of ANCOM knew that foreign investment was vital to the economic development of the subregion, yet they were also cognizant of its dangers.¹⁹⁹ It was felt that the subregion needed foreign investment to supply the capital and advanced technology which the area lacked as a whole.²⁰⁰ However, along with the advantages came the disadvantages. Foreign investors often came to dominate the local economy, which not only hampered the growth of the national private sector but also prevented the government from fully enforcing vital economic policies.²⁰¹ Moreover, the need for foreign capital and technology often resulted in competition to at-

192. The Cartagena Agreement, *supra* note 15, arts. 35-37; Furnish & Atkin, *supra* note 179, at 39-40.

193. The Cartagena Agreement, *supra* note 15, art. 37.

194. *Id.* arts. 36-37; A. WARDLAW, *supra* note 1, at 15.

195. The Cartagena Agreement, *supra* note 15, art. 39.

196. See notes 416-19 *infra* and accompanying text.

197. R. FONTAINE, *supra* note 10, at 17.

198. *Id.*; ANCOM Sets Final Terms on Sectorial [*sic*] Program For Automotive Industry, 1977 BUS. LATIN AMERICA 327.

199. Decision 24 as amended by Decisions 37, 37-A, 70, 103 and 109, Codified Text of the Andean Foreign Investment Code, as of November 30, 1976 Preamble paras. 1-3, reprinted in 16 INT'L LEGAL MATERIALS 138, 139 (1977) [hereinafter cited as Andean Foreign Investment Code]. Decision 24 was originally enacted on December 31, 1970, and is reprinted in 10 INT'L LEGAL MATERIALS 152 (1971).

200. *Id.* para. 2; Zamora, *Andean Common Market—Regulation of Foreign Investments: Blueprint for the Future*, 10 INT'L LAW 153, 154 (1976).

201. Note, *Host Countries' Attitudes Toward Foreign Investment*, 3 BROOKLYN J. INT'L L. 233, 245 (1977) [hereinafter cited as *Host Countries' Attitudes*].

tract foreign investors by offering the most advantageous terms.²⁰² As a result, foreign investors were allowed access to Andean markets under conditions more favorable to them than to the host nation.²⁰³

To insure that foreign investment served a constructive purpose within the subregion, ANCOM foreign investment policy, represented by Decision 24, embodied certain principles.²⁰⁴ Foreign investment was excluded from certain sectors.²⁰⁵ Existing foreign-owned enterprises within the subregion were to "fade-out" their equity ownership to a minority level.²⁰⁶ New foreign investments were also to be subject to equity restraints before being allowed to enter the subregion.²⁰⁷ The use of industrial property rights was limited,²⁰⁸ and repatriation of capital and remittance of profits were to be strictly controlled.²⁰⁹

It was understood that foreign investors might be cautious about these new restrictions.²¹⁰ However, the numerous advantages to ANCOM, it was felt, would ultimately compensate the investor and thus no foreign investment would be lost.²¹¹

III. NATIONAL IMPLEMENTATION AND ANCOM

ANCOM decisions are not self-executing.²¹² Decisions reached

202. R. FONTAINE, *supra* note 10, at 19; Fouts, *The Andean Foreign Investment Code*, 10 TEX. INT'L L. J. 537, 538 (1975).

203. Zamora, *supra* note 200, at 154.

204. R. FONTAINE, *supra* note 10, at 19-20; *Host Countries' Attitudes*, *supra* note 201, at 246-48; Swan, *The Andean Code: A Preliminary Appraisal*, 5 LAW. AMERICAS 259, 262-64 (1973).

205. *The Andean Foreign Investment Code*, *supra* note 199, arts. 41-43; R. FONTAINE, *supra* note 10, at 19; A. WARDLAW, *supra* note 1, at 31.

206. *The Andean Foreign Investment Code*, *supra* note 199, arts. 27-28; R. FONTAINE, *supra* note 10, at 19; Swan, *supra* note 204, at 263.

207. *The Andean Foreign Investment Code*, *supra* note 199, art. 30; R. FONTAINE, *supra* note 10, at 19; Swan, *supra* note 204, at 263.

208. *The Andean Foreign Investment Code*, *supra* note 199, arts. 18-26; A. WARDLAW, *supra* note 1, at 32-33.

209. *The Andean Foreign Investment Code*, *supra* note 199, arts. 7-12; Swan, *supra* note 204, at 262.

210. Oliver, *The Andean Foreign Investment Code: A New Phase in the Quest for Normative Order as to Direct Foreign Investment*, 66 AM. J. INT'L L. 763, 769-71 (1972).

211. *Id.* at 769.

212. *The Cartagena Agreement*, *supra* note 15, art. 27; see *Latest ANCOM Progress Report: Members Implement Most Rules*, 1974 BUS. LATIN AMERICA 210. The weakness of the implementation arrangement was particularly highlighted in Colombia. Some of the ANCOM nations have implemented ANCOM Decisions by use of the Executive Decree. Comment, *The Colombian Supreme Court Decision on the Andean Foreign Investment Code and Its Implications for the Law of Treaties*, 8 J. INT'L L. & ECON. 113, 117 (1973) [hereinafter cited as *Colombian Supreme Court Decision*]. By this method the Member governments are able to avoid extensive alteration of ANCOM Decisions by active legislatures. The President

by ANCOM under the general strategy outlined above must be implemented by the various national law-making bodies. This process of implementation allows the different Member States to make their own interpretations of what is supposed to be a uniform subregion-wide policy.

The requirement of national implementation forces the interested foreign investor to be conscious of the different national attitudes toward foreign investment. These attitudes are briefly outlined as follows.

Bolivia

Bolivia is one of the poorest and least developed nations in ANCOM.²¹³ However, it has vast reserves of untapped natural resources²¹⁴ and has managed to maintain stable growth for five consecutive years.²¹⁵ Bolivia's poverty traditionally has made Bolivia favorably disposed toward foreign investment.²¹⁶ Within the limits of the ANCOM restrictions, Bolivia still views foreign investment favorably.²¹⁷ Although ANCOM policies are generally enforced, allowable foreign investment is actively sought.²¹⁸ Bolivia has actively supported the easing of ANCOM restrictions.²¹⁹

It should be noted that Bolivia recently underwent a coup, and future Bolivian attitudes toward foreign investment are therefore uncertain.²²⁰ It seems likely, however, that the nation's poverty and

of Colombia had by executive order declared the Andean Foreign Investment Code law in Colombia. On December 13, 1971, the Colombian Supreme Court of Justice ruled that the President had no authority to issue such a decree. *Id.*; *Colombia: Supreme Court Decision Concerning Andean Investment Code*, reprinted in 11 INT'L LEGAL MATERIALS 574, 583 (1972). This decision obviously raised certain problems as to the future of subregional unity. *The Colombian Supreme Court Decision*, *supra*, at 113. In effect, the Court had nullified the Andean Foreign Investment Code in Colombia. Kirkwood *et al.*, *Andean Pact Constitutionality: A Final Word from Colombia*, 5 LAW. AMERICAS 614, 615 (1975). The Colombian Congress, in Law 8, in 1973 declared that ANCOM Decisions would have to be approved by Congress. On February 27, 1975, the Supreme Court reversed its previous position and ruled that the Colombian Congress did not have the congressional authority to require congressional approval of ANCOM. *Id.*

213. R. FONTAINE, *supra* note 10, at 39; A. WARDLAW, *supra* note 1, at 25.

214. R. FONTAINE, *supra* note 10, at 41.

215. U.S. DEPARTMENT OF COMMERCE, CURRENT DEVELOPMENTS AND TRENDS IN THE ANDEAN COMMON MARKET 13 (1978) [hereinafter cited as CURRENT DEVELOPMENTS].

216. R. FONTAINE, *supra* note 10, at 40.

217. *Survey of Investment Rules Shows Region's Practices and Points to Future Trends*, 1977 BUS. LATIN AMERICA 371, 372 [hereinafter cited as *Survey*].

218. CURRENT DEVELOPMENTS, *supra* note 215, at 13.

219. *Id.*

220. *Bolivia: Caesarean Birth*, 12 LATIN AMERICA POLITICAL REP. 225 (1978); *Bolivia: Just Another Coup*, 12 LATIN AMERICA POLITICAL REP. 237 (1978).

the wish to maintain its growth rate will combine to uphold its favorable attitude towards foreign investment.

Colombia

Colombia is truly the giant of ANCOM. Its population accounts for over one-third of the total within ANCOM,²²¹ and its economy is the most developed in the subregion.²²² Despite economic problems, Colombia has managed to maintain a GDP growth rate of over seven percent.²²³

Colombia's economic strength has allowed the government to maintain a discriminating view of foreign investment.²²⁴ However, this attitude differs according to the nature of the particular enterprise involved.²²⁵ Manufacturing ventures are only selectively allowed,²²⁶ but investment needed for the development of natural resources is welcomed.²²⁷ ANCOM decisions are usually strictly applied.²²⁸ There is no sign of change in the near future.

Ecuador

Like Bolivia, Ecuador is a poor, underdeveloped nation.²²⁹ However, again like Bolivia, it has managed to maintain a healthy growth rate.²³⁰ The Ecuadorian government views foreign investment favorably,²³¹ and therefore ANCOM restrictions in the Foreign Investment Code have been liberally construed and flexibly enforced.²³²

Peru

Peru is a semi-developed country, falling between the extremes of Bolivia and Ecuador on the one hand and Colombia on the

221. R. FONTAINE, *supra* note 10, at 35; *Latin America*, *supra* note 5, at 21.

222. R. FONTAINE, *supra* note 10, at 35.

223. See CURRENT DEVELOPMENTS, *supra* note 215, at 217.

224. [1977] *Colombia*, 3 INVESTING, LICENSING & TRADING CONDITIONS ABROAD 3 (Bus. Int'l Corp.) (May 1977) [hereinafter cited as *Colombia*]; Survey, *supra* note 217, at 374.

225. Survey, *supra* note 217, at 374.

226. *Id.*

227. CURRENT DEVELOPMENTS, *supra* note 215, at 18.

228. Survey, *supra* note 217, at 374-75.

229. R. FONTAINE, *supra* note 10, at 37.

230. CURRENT DEVELOPMENTS, *supra* note 215, at 14.

231. [1977] *Ecuador*, 3 INVESTING, LICENSING & TRADING CONDITIONS ABROAD 3 (Bus. Int'l Corp.) (June 1977) [hereinafter cited as *Ecuador*].

232. Survey, *supra* note 217, at 374.

other.²³³ The revolutionary military regime governing Peru²³⁴ is generally favorably disposed towards foreign investment.²³⁵ It insists, however, that such investment fit within the government's plans for the Peruvian economy and that such investment comply with the Peruvian government's terms.²³⁶ The regime has a somewhat anti-capitalist orientation,²³⁷ but it took a more conciliatory stance towards private enterprise in 1977 when it took measures to improve the procedures for dealing with foreign investment.²³⁸ Local Peruvian investors feel that the regime now may deal more effectively than before with foreign investors.²³⁹ The government is most favorably disposed toward foreign investment in mining, petroleum, tourism and high technology industries, and therefore investors in these areas may receive somewhat more lenient treatment than other investors.²⁴⁰

Venezuela

Venezuela, like Peru, is a semi-developed nation, but economic growth and development have continued despite some serious economic problems.²⁴¹ Although the government of Venezuela traditionally has been very favorably disposed towards foreign investment, recently Venezuela has decided that the country does not need such investment as much as it once did.²⁴² Therefore, the government has now taken a highly selective approach to foreign investment.²⁴³ Investments which supply advanced technology, stimulate exports, locate in underdeveloped areas, or which provide jobs for Venezuelans are the most favored.²⁴⁴

233. R. FONTAINE, *supra* note 10, at 38.

234. Many of the present government's actions have been interpreted as anti-capitalist. However, the government itself insists that its approach is neither communist nor capitalist. [1977] *Peru*, 3 INVESTING, LICENSING & TRADING CONDITIONS ABROAD 2 (Bus. Int'l Corp.) (November 1977) [hereinafter cited as *Peru*].

235. *Id.* at 3; *Survey*, *supra* note 217, at 374.

236. *Peru*, *supra* note 234, at 3.

237. *Id.*

238. CURRENT DEVELOPMENTS, *supra* note 215, at 19-20.

239. *Id.* at 19.

240. *Survey*, *supra* note 217, at 374.

241. CURRENT DEVELOPMENTS, *supra* note 215, at 20-21; See R. FONTAINE, *supra* note 10, at 33.

242. [1977] *Venezuela*, 3 INVESTING, LICENSING & TRADING CONDITIONS ABROAD 3 (Bus. Int'l Corp.) (July 1977) [hereinafter cited as *Venezuela*].

243. *Id.*; *Survey*, *supra* note 217, at 374.

244. *Survey*, *supra* note 217, at 374.

V. ANCOM DECISIONS AFFECTING FOREIGN INVESTMENT IN ANCOM NATIONS

State Role in Industry

Notwithstanding the fact that the state has historically played a significant role in the economies of the ANCOM nations, ANCOM has no definite policy towards the state's role in economic operations.²⁴⁵ Decision No. 47 of the ANCOM Commission does provide, however, that a business entity with no less than 30% state equity ownership and with absolute veto power²⁴⁶ vested in the state partner is a "mixed" enterprise.²⁴⁷ As will be more fully discussed later, this "mixed company" status allows such a firm to participate fully in ANCOM tariff benefits.²⁴⁸ Foreign investors have used this loophole²⁴⁹ in order to take advantage of ANCOM tariff provisions while retaining majority control.

It should be noted that the governments of certain ANCOM nations do play significant roles in ANCOM-oriented industry.²⁵⁰ In Bolivia, the pre-coup government announced that state-owned companies would conduct business operations, either alone or jointly, with private investors.²⁵¹ There has been no indication of what the post-coup government's position will be. The Peruvian government has already participated in joint ventures with foreign investors.²⁵² The Venezuelan government is an active participant in industry through state-owned companies which have taken part in many joint ventures with foreign investors.²⁵³

245. *Latin America*, *supra* note 5, at 7.

246. The Spanish text used the term "capacidad determinante" which loosely translated means "determining capacity". See Decision 47, Regulations Concerning State Participation in Mixed Companies, December 9-18, 1971, art. 1, reprinted in 11 INT'L LEGAL MATERIALS 373 (1972) [hereinafter referred to as Decision 47]. The decision itself defines this as "a requirement that the representatives of the state concur in the fundamental decisions for the carrying on of the enterprise." *Id.*

247. *Id.*

248. The Andean Foreign Investment Code, *supra* note 199, art. 27.

249. Bayer of West Germany sold 30% of its Peruvian operation to the state-owned Banco Industrial and Corporación Financiera de Desarrollo. *Latin America*, *supra* note 5, at 7.

250. *Latin America*, *supra* note 5, at 7. Such cooperation appears likely. Under the metalworking program, Bolivia is to construct petroleum-well Christmas trees. The State oil company, YPF, has been placed in charge of production. The armed force's Corporación de las Fuerzas Armadas has been made responsible for construction of the items given Bolivia in the automotive program. *Id.* at 7-8. Both state-owned companies will negotiate with private investors for private participation in construction of their assigned products.

251. *Latin America*, *supra* note 5, at 7.

252. *Id.* at 7. The Bayer, Massey-Ferguson and Volvo-Perkins ventures are partially owned by the Peruvian government. *Peru*, *supra* note 238, at 5.

253. [1977] *Venezuela*, *supra* note 242, at 5. The state-owned Corporación Venezolana

Nationalization

ANCOM presently has no unified approach towards nationalization.²⁵⁴ There had been guarantees against expropriation in the original draft of the foreign investment rules.²⁵⁵ However, those guarantees did not survive through the final draft.²⁵⁶

The absence of an ANCOM-wide nationalization policy requires the foreign investor to look at the individual nation's policies. It is difficult to predict what the situation will be in Bolivia because no policy has been announced by the new government. However, the most likely Bolivian approach will be to make guarantees against expropriation to foreign investors in order to attract the foreign capital and technology that both the private investors and the government hope will come to Bolivia.

The Colombian Constitution guarantees that any nationalization requires court action and full compensation.²⁵⁷ The one major example of expropriation occurred when foreign-owned oil-refining facilities in Colombia were nationalized with compensation.²⁵⁸

In Ecuador, there have been few cases of nationalization since the Velasco government fell in 1972.²⁵⁹ Those nationalizations which did occur resulted from impropriety by the foreign investors in acquiring the investment or from investment in the oil industry where Ecuadorian national priorities are seen to predominate.²⁶⁰ All of these nationalizations have been compensated.²⁶¹

In Peru, there is no policy of large scale expropriation, but there have been a few nationalizations with compensation.²⁶² These na-

de Guayana joined Reynolds in an aluminum reduction venture (Aluminio del Caroni). The state-owned Instituto Venezolano de Petroquímica has participated in joint ventures with such companies as Phillips Petroleum, Shell, Goodrich Chemical, Sherwin-Williams, Pechiney-Ugine-Kuhlmann, Transammonia, and Dart Industries. *Id.*

254. *Latin America*, *supra* note 5, at 8.

255. *Id.*

256. *Id.*

257. CONSTITUCIÓN POLITICA DE COLOMBIA art. 30 (Colombia); *Colombia*, *supra* note 228, at 6. It should be noted, however, that Article 30 states that expropriations may be uncompensated for reasons of equity if both the Senate and House of Representatives by majority vote for such a measure.

258. A small joint venture by Mobile Oil and Texaco was bought by the government. Compensation negotiations are still in progress. *Colombia*, *supra* note 224, at 6.

259. *Ecuador*, *supra* note 231, at 4-5.

260. *Id.* at 4.

261. *Id.* at 5.

262. *Latin America*, *supra* note 5, at 6. The present government, which took power in April, 1975, has nationalized Gulf Oil's Peruvian property and the Marcona Mining facilities. Papeles Peruanos de Pucallpa and Química del Pacífico also were affected by Peruvian government nationalization moves. *Id.* The Compensation for the Marcona Mining Company

tionalizations have been carried out under the guarantees in Peruvian law which require that expropriations be approved by the Council of Ministers and that reasonable compensation be provided.²⁶³ It is important to note that in cases where nationalization has proven disastrous, the present government has returned the expropriated property.²⁶⁴

In Venezuela, nationalizations have occurred only in the oil sector under an oil nationalization bill introduced by President Perez and passed by the Venezuelan Congress in 1973.²⁶⁵ Compensation has been given in these cases based on net book value.²⁶⁶ Nationalizations in other sectors seem unlikely.²⁶⁷

Foreign Investment Exclusions

Under the Foreign Investment Code, foreign investment is not permitted in public services,²⁶⁸ insurance, commercial banking, other financial institutions, domestic transportation, advertising, commercial radio stations, television stations, newspapers, magazines, or any enterprise involving domestic marketing of products.²⁶⁹ However, Member States are given discretion to permit investment in these areas when special circumstances exist.²⁷⁰ Moreover, the Members may exclude foreign investment from other business sectors which they consider to be "adequately covered by existing enterprises."²⁷¹

Bolivia has generally enacted the ANCOM restrictions, but it

property had to be settled by diplomatic agreement. Agreement on Compensation for Nationalized Assets of the Marcona Mining Company, September 22, 1976, Peru-United States, T.I.A.S. No. 8417, reprinted in 15 INT'L LEGAL MATERIALS 1100 (1976). The agreed upon compensation was \$61,440,000. *Id.* art. 1.

263. *Latin America*, *supra* note 5, at 6.

264. *Id.* Return to private hands has occurred in the cases of a local foundry and the anchovy fishing fleet. *Id.*

265. *Venezuela*, *supra* note 242, at 5; Law on the Nationalization of the Petroleum Industry, August 29, 1975, reprinted in 14 INT'L LEGAL MATERIALS 1492 (1975).

266. *Venezuela*, *supra* note 242, at 5.

267. *Id.*

268. "Public services" are defined as those that provide drinking water, sewers, electric power, electric lighting, cleaning, sanitation, telephone service, postal and telecommunications services. The Andean Foreign Investment Code, *supra* note 199, art. 41.

269. The Andean Foreign Investment Code, *supra* note 199, arts. 41-43; *Latin America*, *supra* note 5, at 8; *Survey*, *supra* note 217, at 372; CURRENT DEVELOPMENTS, *supra* note 215, at 11.

270. The Andean Foreign Investment Code, *supra* note 199, art. 44. "Special circumstances" are not defined in Article 44. Their existence is in the sole discretion of the Members. *Id.*

271. *Id.* art. 3.

has taken advantage of the special circumstances provision,²⁷² and therefore commercial banks in Bolivia may be foreign-owned.²⁷³ Colombia also has largely followed the ANCOM restrictions.²⁷⁴ Foreign investment is allowed, however, in domestic heavy transportation, tourism and domestic marketing.²⁷⁵ Foreign investment also is allowed in the exploration, exploitation, and processing of natural resources such as forestry, hydrocarbons, mining, and petroleum.²⁷⁶ Ecuador once enforced the ANCOM restrictions loosely, but this policy was reversed in 1975.²⁷⁷ Foreign investment is still allowed in domestic marketing and construction.²⁷⁸

Peru has not only followed the ANCOM restrictions but has added other areas of exclusion as well.²⁷⁹ The marketing of coffee, cotton, oil, imported foods, and copper by-products are disallowed to foreign investors.²⁸⁰ Moreover, the basic industries of iron, steel, nonferrous metal, fertilizer, cement, paper, oil refining, and fish-meal have been placed off limits for foreign investment and have been reserved for government investment.²⁸¹

In Venezuela the government has by-and-large enacted the ANCOM limitations on foreign investment.²⁸² However, natural gas, oil, iron ore, and other natural resource industries have been designated as areas from which foreign investment is excluded.²⁸³ Foreign investors may participate in public services, certain professional services, mass media, and domestic marketing but only to the extent of a 20% equity ownership.²⁸⁴ Under current insurance law, foreign investors also may own insurance companies up to 20%.²⁸⁵

Ownership Restrictions

In order to qualify for ANCOM trade liberalization advantages,

272. CURRENT DEVELOPMENTS, *supra* note 215, at 11; *Survey*, *supra* note 217, at 373.

273. *Survey*, *supra* note 217, at 373.

274. *Colombia*, *supra* note 224, at 7; *Survey*, *supra* note 217, at 375.

275. *Id.*

276. *Colombia*, *supra* note 224, at 7.

277. *Ecuador*, *supra* note 231, at 6; *Survey*, *supra* note 221, at 375.

278. *Id.* Construction and domestic marketing enterprises can be no more than 20% foreign-owned. *Id.*

279. *Survey*, *supra* note 217, at 375.

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*; *Venezuela*, *supra* note 242, at 6.

284. Venezuelan Decree 2031, Foreign Investment Decree, February 11, 1977, art. 1, reprinted in 16 INT'L LEGAL MATERIALS 1531 (1977) [hereinafter Venezuelan Decree 2031]; *Survey*, *supra* note 217, at 375; *Venezuela*, *supra* note 242, at 7.

285. *Venezuela*, *supra* note 242, at 6.

all existing and new foreign-owned companies must convert into "national" or "mixed" companies.²⁸⁶ The Foreign Investment Code defines "national companies" as those having over 80% equity ownership held by "national investors" with proportionate control.²⁸⁷ A "mixed company" is one with 51% to 80% equity ownership by national investors.²⁸⁸ A company with less than 51% national equity ownership is classified as a "foreign company" and is, therefore, denied participation in ANCOM trade programs.²⁸⁹ Existing firms must have agreed to a "fade-out" schedule by December 31, 1973.²⁹⁰ New companies must agree to a fade-out schedule before any investment in that company is permitted.²⁹¹ Any new or existing companies which do not qualify as national or mixed companies or which have not filed fade-out plans to become such companies are denied access to ANCOM trade advantages.²⁹²

The Foreign Investment Code provides a definite schedule for the fade-out process whereby a foreign company becomes a national or mixed company.²⁹³ The transformation period for "existing" foreign companies may not exceed 15 years in Colombia, Peru, and Venezuela or 20 years in Bolivia and Ecuador, as measured from January 1, 1974.²⁹⁴ By December 31, 1973, 15% of the capital participation must be in national hands; 45% must be national by the end of two-thirds of the agreed upon time period for transformation; and 51% must be national by the end of that period.²⁹⁵ The fade-out schedule for firms established in an ANCOM nation after July 1, 1971, also may not exceed 15 years in Colombia, Peru, and Venezuela or 20 years for Bolivia and Ecuador from time of establishment.²⁹⁶ For Colombia, Peru, and Venezuela, the fade-out agreement must provide for at least 15% national participation in capital by the time production begins; at least 30% by the end of one-third of the agreed upon period; and at least 45% by the end of two-thirds

286. The Andean Foreign Investment Code, *supra* note 199, art. 27. If fade-out plans have been agreed to, a firm is eligible for ANCOM trade benefits during the fade-out process.

287. *Id.* art. 1.

288. *Id.*

289. *Id.*

290. *Id.*

291. The Andean Foreign Investment Code, *supra* note 199, art. 30; A. WARDLAW, *supra* note 1, at 32.

292. The Andean Foreign Investment Code, *supra* note 199, art. 27.

293. *Id.* arts. 28, 30.

294. *Id.* art. 28.

295. *Id.*

296. *Id.* art. 30. The source fails to include Venezuela, and it still mentions Chile because it was printed prior to Chile's withdrawal.

of that period.²⁹⁷ For Bolivia and Ecuador, the fade-out must provide for 5% national participation three years after production commences; at least 10% by the end of one-third of the agreed upon period; and 35% at the completion of two-thirds of that period.²⁹⁸ The 20-year periods in Bolivia and Ecuador start running two years after production begins.²⁹⁹

ANCOM has developed definitive guidelines setting forth what is to be considered "national capital."³⁰⁰ Capital invested in any ANCOM nation by the Andean Development Corporation is considered national.³⁰¹ Investments made by a national investor from any Member other than the host country is considered "subregional"; subregional investment is deemed national if the country of origin has authorized the investment and if the investment has been submitted to the host country for prior approval.³⁰² Capital invested by ANCOM multinational corporations also is considered national investment.³⁰³ Investments by international public financial entities or foreign (non-ANCOM) governmental bodies in the form of economic cooperation are characterized as neutral, rather than national or foreign.³⁰⁴

There are some notable exceptions to the general minority foreign equity participation rule. First, as mentioned above, a company may qualify for mixed company status if 30% of the equity is owned by one of the ANCOM governments and if that government has absolute veto power.³⁰⁵ Second, for the first ten years of the Foreign Investment Code's existence, the members may permit foreign investment without fade-out in basic product industries, such as mineral exploration and production and forest exploitation, if the investment is allowed under a concession system with the contract

297. *Id.*

298. *Id.*

299. *Id.*

300. The Andean Foreign Investment Code, *supra* note 199, art. 1; *Latin America, supra* note 5, at 8-9.

301. The Andean Foreign Investment Code, *supra* note 199, art. 1; *Latin America, supra* note 5, at 9.

302. The Andean Foreign Investment Code, *supra* note 199, art. 1.

303. *Latin America, supra* note 5, at 9. An ANCOM multinational is a corporation in which there is equity participation from at least two ANCOM nations and there is no more than 40% foreign equity participation. *Id.*

304. The Andean Foreign Investment Code, *supra* note 199, *reprinted in* 16 INT'L LEGAL MATERIALS 138, 155 (1977). At the time of the publication of the reprint, the article mentioned had not been numbered. Therefore, the page where the article may be found is given in the cite.

305. See notes 246-52 *supra* and accompanying text.

not exceeding 20 years.³⁰⁶ Third, foreign-owned business entities with 80% of their production destined for third country markets do not have to fade-out their foreign investment to a minority position.³⁰⁷ Finally, since 1976, foreign or mixed companies which are engaged in tourism do not have to go through the fade-out process.³⁰⁸

For the most part, the ANCOM members have faithfully adopted the ANCOM rules on ownership restriction.³⁰⁹ However, there are a few local peculiarities.³¹⁰ In Ecuador, for example, the fade-out schedule is highly negotiable.³¹¹ In Peru, one-third of the net worth of industrial companies must eventually be held by "workers".³¹²

Registration Requirements

ANCOM does have registration requirements.³¹³ Foreign investors must register all of their investments with the host nation.³¹⁴ Reinvestments are treated like investments for registration purposes, but also must be approved by the host country.³¹⁵ However, reinvestments of profits not exceeding 7% of invested capital may be done without prior approval.³¹⁶

Registration requirements differ somewhat from Member to Member. In Bolivia, investment by foreigners must be registered with the National Investment Institute.³¹⁷ In Colombia, National Planning Department approval must be received for foreign invest-

306. The Andean Foreign Investment Code, *supra* note 199, art. 40; *Latin America, supra* note 5, at 9.

307. The Andean Foreign Investment Code, *supra* note 199, art. 40; *Latin America, supra* note 5, at 9.

308. *Latin America, supra* note 5, at 9.

309. *Survey, supra* note 217, at 372, 374.

310. *Id.* at 374.

311. *Id.*

312. *Id.*

313. The Andean Foreign Investment Code, *supra* note 199, arts. 1, 5.

314. *Id.* art. 5.

315. *Id.* arts. 1, 5.

316. *Id.* art. 13.

317. CURRENT DEVELOPMENTS, *supra* note 215, at 13; *Survey, supra* note 217, at 372.

Interested foreign investors should contact:

Instituto Nacional de Inversiones
1492 Avenida Camacho
La Paz, Bolivia

and

Instituto Nacional de Financiamiento
1336 Avenida Camacho
La Paz, Bolivia

CURRENT DEVELOPMENTS, *supra* note 215, at 11.

ment.³¹⁸ Such investments must also register with the Exchange Office of the Central Bank.³¹⁹

In Ecuador, new foreign investment must be registered with the Foreign Investment Office of the Ministry of Industries, Commerce and Integration.³²⁰ However, companies with an interest of 10% or less in a local company need not register.³²¹

Peruvian law requires that all foreign investment be approved by both the Central Bank and the appropriate ministry.³²² The Foreign Investment Commission coordinates this approval process.³²³ In addition, the foreign investor must register incoming foreign capital with the Central Bank.³²⁴

In Venezuela, foreign investors must register their investments with the Superintendency of Foreign Investment.³²⁵ All manufactur-

318. CURRENT DEVELOPMENTS, *supra* note 215, at 17-18; *Survey*, *supra* note 217, at 374. Interested investors should contact:

Departamento Nacional de Planeación
Carrera 10, No. 27-27
Bogotá, Colombia

CURRENT DEVELOPMENTS, *supra* note 215, at 11.

The Colombian government has a set of criteria to determine if approval should be given: the contribution to Latin American economic cooperation; the investment's net effect on Colombia's balance of payments; the possible improvement in domestic employment that would result; the degree of Colombian participation in management and capital; and the technological contribution to Colombia that the investment will make. *Id.* at 18.

319. *Survey*, *supra* note 217, at 374. The address is:

Oficina de Cambio del Banco de la República
Carrera 5, No. 15-80
Bogotá, Colombia

CURRENT DEVELOPMENTS, *supra* note 215, at 11.

320. *Survey*, *supra* note 217, at 374. Contact:

Departamento de Inversiones
Ministerio de Industrias, Comercial Integración
Juan León Mera y Roca esq.
Quito, Ecuador

CURRENT DEVELOPMENTS, *supra* note 215, at 374.

321. *Survey*, *supra* note 217, at 374.

322. *Peru*, *supra* note 234, at 7; *Survey*, *supra* note 217, at 374. The Ministry of Finance is the appropriate agency for financial operations; the Ministry of Industry and Tourism for manufacturing and tourist enterprises; and the Ministry of Mines and Energy for petroleum, mineral and power ventures. *Peru*, *supra* note 234, at 7. Contact:

Comisión Nacional de Inversiones
Tecnologías Extranjeras (CONITE)
Avenida Emancipación 266
Quinto Piso
Lima, Perú

323. *Peru*, *supra* note 234, at 7; *Survey*, *supra* note 217, at 374.

324. *Id.*

325. *Survey*, *supra* note 217, at 374.

ing investment must also be registered with the Directorate of Industry of the Development Ministry.³²⁶

Restrictions on Acquisitions and Takeovers

In general, foreign acquisitions or takeovers are prohibited under the Foreign Investment Code unless certain requirements are met.³²⁷ First, the local or subregional company must be on the very verge of bankruptcy, and this determination must be verified by the particular national agency in charge of supervising corporations.³²⁸ Second, local or subregional investors must be given a first option to purchase.³²⁹ Third, foreign investors acquiring equity in a takeover or acquisition must agree to sell that amount of stock necessary to make the company a national company within 15 years.³³⁰ It should be noted that a foreign investor may acquire stock in mixed companies if the purchase will increase the company's capital without loss of local control.³³¹ The ANCOM members have adopted these rules in their entirety.³³²

Remittance Limits

Under the Foreign Investment Code, annual profit remittances are limited to 20% of the registered capital, but Members may allow higher limits if they choose.³³³ Any company going through the fade-out process may repatriate the fade-out proceeds up to the initial amount of registered and authorized capital plus the registered reinvestment.³³⁴ All of the ANCOM nations have enacted this provision,³³⁵ but Ecuador applies the limit very flexibly.³³⁶

Borrowing Restrictions

The Foreign Investment Code allows foreign investors access to

326. *Id.*

327. The Andean Foreign Investment Code, *supra* note 199, art. 3; *Survey, supra* note 217, at 373.

328. The Andean Foreign Investment Code, *supra* note 199, art. 3.

329. *Id.* art. 3(b).

330. *Id.* art. 3(c).

331. *Id.* art. 4.

332. *Survey, supra* note 217, at 373-74.

333. The Andean Foreign Investment Code, *supra* note 199, art. 37; *Survey, supra* note 217, at 373.

334. The Andean Foreign Investment Code, *supra* note 199, art. 10; *Survey, supra* note 217, at 373.

335. *Survey, supra* note 217, at 373, 375.

336. *Id.* at 375.

only short-term or medium-term credit,³³⁷ and access to that credit is regulated by the individual Members.³³⁸ The effective interest rates on parent-subsidiary loans are restricted to no more than three percentage points above the prime interest rate in the financial market of the lender.³³⁹ Moreover, the individual Member State governments are allowed to set limits on foreign indebtedness.³⁴⁰

The Member States have enacted these ANCOM rules, but there are local rules that also must be complied with. In Colombia, all foreign loans must be registered with the Exchange Office of the Central Bank.³⁴¹ In Ecuador, although the ANCOM rules apply generally, the government allows somewhat greater flexibility in obtaining local credit.³⁴² However, in order to guarantee servicing at the official exchange rate, foreign loans in Ecuador are required to be registered with the Central Bank.³⁴³ In Peru, the general ANCOM rules apply, but any foreign loan must be both registered with and approved by the Central Bank.³⁴⁴ In Venezuela, although the government has put no real restrictions on the accessibility to loan funds, medium and long-term credit may be difficult to secure due to the relative scarcity of funds.³⁴⁵ Foreign loans must be both registered with and approved by the Superintendency of Foreign Investment.³⁴⁶

Access to Incentives

Theoretically, ANCOM has a uniform incentives policy.³⁴⁷ Decision 49 sets forth a detailed version of such a policy.³⁴⁸ However, in practice this stated policy does not reflect reality.

In Bolivia, foreign firms are eligible along with domestic firms for tax and duty exemptions as well as land grant incentives. In Colombia, foreign firms have equal access to incentives, but incentives are granted by the National Council of Economic and Social Policy only on a case-by-case basis.³⁴⁹ The likelihood of approval

337. *Latin America, supra* note 5, at 11; *Survey, supra* note 217, at 373.

338. *Survey, supra* note 217, at 373.

339. *Latin America, supra* note 5, at 11; *Survey, supra* note 217, at 373.

340. *Survey, supra* note 217, at 373.

341. *Id.* at 375.

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*; *Venezuela, supra* note 242, at 20.

346. *Survey, supra* note 217, at 375.

347. *Latin America, supra* note 5, at 11; *Survey, supra* note 217, at 373.

348. *Latin America, supra* note 5, at 11; *Survey, supra* note 217, at 373.

349. *Survey, supra* note 217, at 373.

varies with the particular incentive sought.³⁵⁰ In Ecuador, foreign firms may qualify for capital, tariff, and tax incentives.³⁵¹ However, the availability of such incentives varies according to the business activity and its location.³⁵² In Peru, all foreign firms are eligible to apply for tax, tariff, and capital incentives.³⁵³ In Venezuela, foreign firms have equal access to tariff and tax incentives along with local firms, but they are not eligible for capital incentives.³⁵⁴

Labor Legislation

There is no ANCOM-wide labor legislation as yet. However, in September of 1977, Andean labor ministers met in Santa Cruz, Bolivia, to discuss possible ANCOM legislation concerning migrant workers.³⁵⁵ This legislation would unify the procedures for obtaining migrant worker identification papers and would guarantee free movement of workers in border areas.³⁵⁶ Furthermore, the labor ministers held discussions in June, 1978, concerning the comprehensive unification of the subregion's labor laws.³⁵⁷

Until such comprehensive ANCOM legislation is adopted, foreign investors will have to be familiar with the national labor situation. In Colombia, unionized labor is comparatively weak. Existing unions are organized on an industry or regional basis, and all belong to one of the major labor confederations: the Confederación de Trabajadores de Colombia, the Confederación General del Trabajo, the Confederación Sindical de Trabajadores de Colombia, and the Unión de Trabajadores de Colombia.³⁵⁸ Strikes are prohibited only in the public services area.³⁵⁹

In Ecuador, approximately 200,000 people belong to one of the labor confederations, the largest of which is the pro-communist Confederación de Trabajadores Ecuatorianos which dominates the manufacturing sector.³⁶⁰ Ecuadorian legislation does guarantee the right to strike, and despite adverse government reaction, the labor confederations have resorted to the strike remedy with increasing

350. *Latin America*, *supra* note 5, at 17.

351. *Survey*, *supra* note 217, at 375.

352. *Id.*

353. *Id.*

354. *Id.*

355. *Newsbriefs—Andean Pact*, 5 *LATIN AMERICA ECON. REP.* 144 (1977).

356. *Id.*

357. *Newsbriefs—Andean Pact*, 6 *LATIN AMERICA ECON. REP.* 168 (1978).

358. *Colombia*, *supra* note 224, at 20.

359. *Id.*

360. *Ecuador*, *supra* note 231, at 16.

frequency.³⁶¹

In Peru, the labor union movement is relatively strong in comparison to Latin America generally with a membership of 500,000 of the nation's 5,000,000 person work force.³⁶² There are six major labor groups: the Confederación General de Trabajadores del Peru (Moscow Communist), the Confederación de Trabajadores de la Revolución Peruana (government controlled), the Confederación Nacional de Trabajadores (Christian Democrat), the Confederación de Trabajadores del Peru, the Federación de Trabajadores de la Industria Metalurgica Centromin (Trotskyist), and the Sindicato Único de Trabajadores de la Educación Peruana (Peking communist).³⁶³ A compulsory negotiation procedure for employer-employee disputes is provided by the government.³⁶⁴ During economic crises strikes have been outlawed.³⁶⁵

In Venezuela, more than 60% of the labor force belongs to unions.³⁶⁶ Most unions are members of the Confederación de Trabajadores Venezolanos.³⁶⁷ Strikes are legal in Venezuela.³⁶⁸

VI. LICENSING: PATENTS, TRADEMARK, AND THE IMPORTATION OF TECHNOLOGY

ANCOM has enacted rules governing the importation of technology, the use of trademarks, and the use of patents.³⁶⁹ These rules, as will be seen below, were an effort to prevent royalties and similar payments from being used as a method for exacting excessive profits.³⁷⁰

The Importation of Technology

Contracts involving the transfer of technology must be examined and approved by the appropriate authority in the Member's government.³⁷¹ The government authority must evaluate the "effective contribution" of the goods which incorporate the technol-

361. *Id.*

362. *Peru, supra* note 234, at 24.

363. *Id.*

364. *Id.*

365. *Id.*

366. *Venezuela, supra* note 242, at 21.

367. *Id.*

368. *Id.*

369. *Latin America, supra* note 5, at 10.

370. *Id.*

371. The Andean Foreign Investment Code, *supra* note 199, art. 18.

ogy or in some other way assess the effects of the imported technology.³⁷²

The Foreign Investment Code regulates those contract clauses which may be included in a technology importation contract.³⁷³ The contracts are required to contain clauses identifying the terms of the technology transfer, detailing the contractual value of each element involved in the transfer, and determining the time period which is involved.³⁷⁴ The Foreign Investment Code forbids the approval by a Member of a contract containing clauses which require the recipient nation or business enterprise to acquire from any particular source other technologies, raw materials, capital goods or intermediate products or to retain permanently designated personnel in exchange for the technology transferred, which reserve the right for the transferor to fix the sale or resale price of the goods utilizing the technology, which restrict the structure or volume of production, which establish for the transferor a full or partial purchase option, which require the technology recipient to transfer to the technology supplier the improvements or inventions resulting from the use of the technology, or which forbid the utilization of competing technologies.³⁷⁵

The Foreign Investment Code also regulates royalties received for intangible technological contributions.³⁷⁶ In general, such royalties are allowed when authorized by a Member government agency.³⁷⁷ However, such contributions may not be used as capital contributions.³⁷⁸ Furthermore, no royalties are allowed if the contribution is to a foreign enterprise from its parent company or its affiliate.³⁷⁹

Patents

Like technology transfer contracts, contracts involving the use of patents must be examined and approved by the appropriate Member government agency.³⁸⁰ Furthermore, such contracts are also

372. *Id.*

373. *Id.* arts. 19-20.

374. *Id.* art. 19.

375. *Id.* art. 20.

376. *Id.* art. 21.

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.* art. 18. Patent applications also must be submitted to the appropriate Member government authority. These applications must contain the name and address of the applicant or inventor, the name of the invention, and the invention's purpose or object. Decision

subject to the same restrictions as the above-discussed technology transfer contracts.³⁸¹ In addition, a contract may not require payment for unused patents.³⁸²

Decision 85 strictly regulates what may be patented.³⁸³ Patents may be granted only for new inventions capable of industrial application or for those creations which complement inventions.³⁸⁴ An invention which has been made available elsewhere cannot be patented.³⁸⁵ Certain creations are not regarded as inventions: scientific principles and discoveries; the discovery of existing natural matter; therapeutic, surgical or diagnostic methods in medicine; or accounting, financial or commercial plans.³⁸⁶ Furthermore, no patents may be given for the following: inventions contravening good morals or public order; vegetable varieties or animal species; biological processes; pharmaceutical products, medications or other therapeutic substances; beverages or foods; foreign inventions which were patented in a foreign jurisdiction over one year before the local patent request; or inventions affecting a Member's development.³⁸⁷

Trademark

The Foreign Investment Code also regulates trademark use. Contracts for trademark use, like contracts for technology transfer and patents, must be approved by the Member governments.³⁸⁸ Such contracts may not include clauses which prohibit or limit the sale or exportation of products manufactured under the trademark or similar goods in specified countries, which obligate the trademark recipient to use equipment, intermediate goods or raw materials which are supplied by the trademark owner or his affiliates, which fix the sale or resale prices for goods manufactured under the trademark, which obligate the recipient to pay royalties for unused trademarks, or which obligate the recipient to employ personnel designated by the owner.³⁸⁹

85. Decision on Industrial Property, May 27-June 4, 1974, art. 11, *reprinted in* 14 INT'L LEGAL MATERIALS 1489 (1975).

381. The Andean Foreign Investment Code, *supra* note 199, art. 20.

382. *Id.* art. 20(g).

383. Decision 85, Decision on Industrial Property, May 27-June 4, 1974, *reprinted in* 14 INT'L LEGAL MATERIALS 1489 (1975).

384. *Id.* art. 1.

385. *Id.* art. 2.

386. *Id.* art. 4.

387. *Id.* art. 5.

388. *Id.* The Andean Foreign Investment Code, *supra* note 199, art. 18.

389. *Id.* art. 25.

VII. ANCOM—WILL IT SURVIVE?

The importance of ANCOM to the potential foreign investor depends upon ANCOM's continued survival. Some experts and even one Member's president have expressed doubts about ANCOM's future.³⁹⁰ It is undoubtedly true that ANCOM has not lived up to its original promises and goals, but since the initial plan was very ambitious and optimistic, this fact is hardly surprising. The ANCOM nations were simply trying to do too much in too short a time. A brief balancing of successes and failures is provided in order to evaluate ANCOM's probable future.

There have been undeniable failures by ANCOM. First, in its first four years ANCOM has proven incapable of keeping peace between its members and between itself and its members. Ecuador was the first to create problems.³⁹¹ In 1974, the Ecuadorian government decided to enforce a four year old law banning any pharmaceutical imports.³⁹² Peru and Colombia, the nations in ANCOM with the most developed pharmaceutical industries, were understandably irate over this move.³⁹³ The fact that the pharmaceutical industry was to be included in one of the SPIDs made the problem all the more serious.³⁹⁴

Chile was the next ANCOM nation to precipitate a crisis.³⁹⁵ In July of 1974, the Chilean Junta enacted Decree-law No. 600, the new foreign investment code for Chile.³⁹⁶ The new code's provisions were far less strict than those of ANCOM's Decision 24.³⁹⁷ In September of 1974, Bolivia, Colombia, Ecuador, Peru, and Venezuela attacked Decree-law 600 and declared it to be in violation of Decision 24.³⁹⁸ Furthermore, the other ANCOM nations refused to change Decision 24 to meet the Chilean criticisms which had led to the enactment of Decree-law 600.³⁹⁹ By December 1974, Chile had yielded to the

390. *Andean Pact: High Level Meeting*, 12 LATIN AMERICA POLITICAL REP. 245 (1978) [hereinafter cited as *High Level Meeting*]; Vargas-Hidalgo, *supra* note 1, at 320.

391. *Companies and ANCOM Members React to Ecuador's Drug Ban*, 1974 BUS. LATIN AMERICA 255.

392. *Id.*

393. *Id.*

394. *Id.*

395. Comment, *Chile's Rejection of the Andean Common Market Regulation of Foreign Investment*, 16 COLUM. J. TRANSNAT'L L. 138 (1977) [hereinafter cited as *Chile's Rejection*].

396. *Id.* at 139.

397. *Id.*; *Andean Countries Challenge Chile's Investment Law*, 1974 BUS. LATIN AMERICA 312 [hereinafter cited as *Andean Countries Challenge*].

398. *Andean Countries Challenge*, *supra* note 397, at 312.

399. *Id.*

solid opposition of its fellow ANCOM members,⁴⁰⁰ and the Chilean Junta enacted Law 746, affirming Decision 24 as the law in Chile.⁴⁰¹ In return, the ANCOM Junta agreed to study possible areas of improvement in Decision 24.⁴⁰² The truce did not last long. By 1976 Chile once again was complaining about Decision 24 and its lack of revisions.⁴⁰³ By September of 1976, it was clear that Chile was going to leave ANCOM.⁴⁰⁴ Chile and ANCOM began drafting the withdrawal conditions in October, 1976,⁴⁰⁵ and by August, 1977, Chile had virtually severed its last links with ANCOM.⁴⁰⁶

The latest ANCOM member to cause considerable problems for the organization has been Bolivia. In late 1976, government officials and private-sector businessmen in Bolivia began to express dissatisfaction with the benefits Bolivia was deriving from ANCOM.⁴⁰⁷ This dissatisfaction reached a crisis stage in February, 1977, when Dresser Industries of the United States pulled out of a joint venture with certain Bolivian industries.⁴⁰⁸ The venture had been started in 1974 to manufacture drill bits to be supplied to the other ANCOM nations.⁴⁰⁹ After two years of operation, the venture had not been able to sell one drill bit.⁴¹⁰ The situation had deteriorated so badly that private sector leaders in Bolivia had refused to talk with ANCOM officials who were visiting Bolivia in an attempt to shore up support for ANCOM.⁴¹¹ In March, 1977, the Junta suggested a program to satisfy Bolivian complaints.⁴¹² The most controversial of the Junta's proposals was that the other members of ANCOM move into Bolivia any plants within their borders which produced goods

400. *ANCOM Solution to Investment Code Controversy Shows Solidarity of Bloc*, 1974 BUS. LATIN AMERICA 385 [hereinafter cited as *ANCOM Solution*].

401. *Id.* at 385-86; *Chile's Rejection*, *supra* note 395, at 139.

402. *ANCOM Solution*, *supra* note 400, at 386.

403. *Chilean Dissension To Have Minimal Effect on ANCOM Trade Proposals*, 1976 BUS. LATIN AMERICA 257; *Chile and ANCOM: What Are the Issues and What Can Result*, 1976 BUS. LATIN AMERICA 297.

404. *ANCOM Begins Drafting Conditions for Chilean Withdrawal*, 1976 BUS. LATIN AMERICA 335.

405. *Id.*

406. *ANCOM Must Handle Another Major Problem Created by Chilean Exit*, 1977 BUS. LATIN AMERICA 30; *Chile Cuts Last ANCOM Links*, 1977 BUS. LATIN AMERICA 277; *Chile Withdraws from the Andean Development Corporation*, 16 INT'L LEGAL MATERIALS 1585 (1977).

407. *The Pullout of Dresser From Bolivian Operation Shows Problems of ANCOM*, 1977 BUS. LATIN AMERICA 57, 58.

408. *Id.*

409. *Id.* at 57.

410. *Id.*

411. *Id.* at 58.

412. *ANCOM Meeting Stalled*, 1977 BUS. LATIN AMERICA 131.

allocated to Bolivia under the various SPIDs.⁴¹³ The other members have shown little enthusiasm for this suggestion.⁴¹⁴ Moreover, Bolivia underwent a coup in July, 1978,⁴¹⁵ and it is now unclear just what course the Bolivian problem will take.

Another major failure of ANCOM has been its delay in the planning and implementing of the crucial SPIDs.⁴¹⁶ According to the original plan, all the sectoral programs were to be approved by the end of 1975.⁴¹⁷ By August of 1978, however, only the metalworking, petrochemical, and automotive plans had been approved.⁴¹⁸ The new deadline is 1980.⁴¹⁹

However, it has not been all failure for ANCOM. The survival of the group so far is somewhat of an achievement in itself. ANCOM has weathered such major crises as the withdrawal of Chile. While other economic groups such as the Central American Common Market and Caribcom have withered on the vine, ANCOM has continued to live.

Furthermore, one of the original goals of the organization has been fulfilled. The group has been able to negotiate as a bloc within LAFTA⁴²⁰ and consequently has much more importance within LAFTA than they otherwise would have as individual nations.

Although there has been much inter-organization squabbling, an Andean spirit has developed.⁴²¹ This emerging spirit can hardly be called Andean patriotism, but it can be viewed as a sense of

413. *Id.*

414. *Id.*

415. *Bolivia: Caesarean Birth*, 12 LATIN AMERICA POLITICAL REP. 225 (1978); *Bolivia: Just Another Coup*, 12 LATIN AMERICA POLITICAL REP. 237 (1978). The current Bolivian problem for ANCOM is being complicated by another minor crisis. Peru and Ecuador are currently engaged in a small-scale border war on the undefined common border. *Peru and Ecuador: Another Incident*, 12 LATIN AMERICA POLITICAL REP. 31 (1978).

416. R. FONTAINE, *supra* note 10, at 17.

417. The Cartagena Agreement, *supra* note 15, art. 47; A. WARDLAW, *supra* note 1, at 13.

418. R. FONTAINE, *supra* note 10, at 17; *ANCOM Sets Final Terms on Sectorial [sic] Program For Automotive Industry*, 1977 BUS. LATIN AMERICA 327.

419. *Andean Pact In Fragile State of Health*, 6 LATIN AMERICA ECON. REP. 242 (1978) [hereinafter cited as *Fragile State of Health*]. As explained in the above article, the Lima Protocol extended the Sectoral Program deadline to the end of 1978. Lima Protocol, *supra* note 55, art. 1; *Fragile State of Health*, *supra*, at 242. However, in the Arequipa Agreement the Members agreed to extend the deadline one to two years. *Fragile State of Health*, *supra* at 242. However, only Ecuador has ratified the Arequipa Agreement as of August 11, 1978.

420. *ANCOM's Stance in Talks May Provide Key to "New" LAFTA*, 1974 BUS. LATIN AMERICA 217; *ANCOM To Play Key Role In This Month's LAFTA Negotiations*, 1975 BUS. LATIN AMERICA 266.

421. Rosenstein-Rodan, *Quo Vadis, Latin America? Reflections on Latin America Solidarity*, in LATIN AMERICA'S NEW INTERNATIONALISM 310, 313 (R. Fontaine & J. Theberge ed. 1976).

common interest.⁴²² On the more material side, Members have scored trade gains, illustrated by the fact that intraregional trade has gone up 457% in the 1972-1977 period.⁴²³

ANCOM has also been successful at establishing links to other economic powers. Mexico, Brazil, and Argentina have often sent representatives to observe the workings of ANCOM.⁴²⁴ The European Economic Community also has maintained relations with ANCOM.⁴²⁵ If ANCOM survives its current problems, this interest could expand.

In the final analysis, ANCOM's continued life will depend upon how the Bolivian problem is solved. It is doubtful that ANCOM could stand the loss of another Member. Furthermore, the unexploited raw materials promise to bring a wide prosperity to the region as a whole if the organization should survive.⁴²⁶ The original reasons for forming ANCOM still exist and this fact may well keep Bolivia from leaving. It also is true that there is no real evidence that Bolivia would do any better outside of ANCOM than within.

The foreign investor contemplating investment within the subregion should pay serious attention to ANCOM for a variety of reasons. ANCOM, with its penchant for survival, is likely to weather the present crises. Furthermore, the members of ANCOM, through their ANCOM membership, have gained a great deal of sophistication in dealing with foreign investment. Finally, certain ANCOM policies are likely to continue whether ANCOM does or not.

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422. *Id.*

423. *Despite Problems Andean Common Market Shows Trade Gains*, 1978 *BUS. LATIN AMERICA* 221. Regional exports during the mentioned period increased precipitously by 457%. *Id.*

424. *Newsbriefs—Andean Pact*, 6 *LATIN AMERICA ECON. REP.* 82 (1978).

425. *Newsbriefs—Andean Group*, 5 *LATIN AMERICA ECON. REP.* 82 (1977); *Newsbriefs—Andean Group*, 4 *LATIN AMERICA ECON. REP.* 165 (1976).

426. R. FONTAINE, *supra* note 10, at 41.

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