An Investment Policy Analysis of Andean Common Market

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INTRODUCTION

The economic development of the Latin American nations has been slow. 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. The political disunity of the area has made any large scale uniform reaction to the problem of slow development next to impossible.

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, have attempted several schemes of economic integration. It is hoped that integration will lead to a more balanced development and an independence from foreign economies.

The Andean Common Market (ANCOM) is the most successful of the Latin American efforts at integration. It was born out of a dissatisfaction with the Latin American Free Trade Association.
(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 Bogotá\(^11\) which announced the intent of the
signatory nations to form a subregional group\(^12\) 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

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9. LAFTA was formed in 1960 by the Montevideo Treaty. Treaty Establishing a Free
10. R. Fontaine, The ANDEAN Pact 11-12 (1977); A. Wardlaw, supra note 1, at 3.
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.
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. García-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 FACTO 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.
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. The Andean Bloc's market size is 20.80, and market growth in 1977 was 36%. Bolivia and Ecuador, two of the ANCOM nations, ranked third and fifth in market growth in Latin America with 54% and 50% respectively. Moreover, the nations of ANCOM are important exporters of both raw materials and agricultural products. 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.

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. A number of planning

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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.*


26. The Cartagena Agreement, *supra note 15, ch. II.*
councils were added shortly after ANCOM came into existence. Two new organs, the Andean Reserve Fund and a yet to be named Andean tribunal, have recently been formed. 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.

*The Commission*

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

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. 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. It may also propose reforms of the Cartagena Agreement to the Member States.

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. The Commission issues instructions to the Junta and may delegate any powers it so desires to that body. Finally, Junta proposals are approved, vetoed or amended by the Commission.

The will of the Commission is expressed in the form of

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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”.
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”. 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.\(^5\) 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.\(^1\)

Special provisions for the appointment of Junta members are set forth in the Cartagena Agreement.\(^2\) Junta appointments must be unanimously approved.\(^3\) However, removal is accomplished by two-thirds affirmative vote.\(^4\)

The Lima Protocol established a special voting system for the required approvals of Sectoral Programs.\(^5\) A proposed Sectoral Program is adopted if it receives a two-thirds affirmative vote with no negative vote cast.\(^6\) Those proposals rejected by a negative vote are returned to the Junta for consideration of the reasons for the negative vote or votes.\(^7\) Within one to three months of the initial vote, the Junta may resubmit the proposal to the Commission.\(^8\) The proposal is then adopted if it receives a two-thirds affirmative vote.\(^9\)

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.\(^10\) 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.\(^11\) Moreover, the Commission cannot simply ignore Junta proposals because the Cartagena Agreement specifically requires that the Commission consider them.\(^12\) As a result of these limitations, the Commission usually just responds to Junta initiatives instead of acting on its own volition.\(^13\)

\(^{50}\) Id. art. 11(c); A. \textit{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.


\(^{56}\) Id.

\(^{57}\) Id.

\(^{58}\) Id.

\(^{59}\) Id.

\(^{60}\) A. \textit{WARDLAW}, supra note 1, at 9.

\(^{61}\) Id.

\(^{62}\) The Cartagena Agreement, supra note 15, art. 12.

\(^{63}\) R. \textit{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. Members may be from any Latin American nation, including non-ANCOM nations. Although practice has been at variance, the Junta members are required by the Cartagena Agreement to act in the common interest without being influenced by national interests. Unlike the Commission, the Junta is a permanent body with its headquarters in Lima, Peru.

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. 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.

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. 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. This fact, combined with the permanent nature of the institution, has made the Junta much more of an experienced, seasoned body than the Commission.

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.
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.\(^8^5\)

**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.\(^8^6\)

**The Andean Reserve Fund**

After over two years of discussion and delay, the Andean Reserve Fund\(^8^7\) finally began to function in July of 1978.\(^8^8\) 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.\(^8^9\) Unofficially, the Fund has two other aims. First, it is hoped that the Fund will operate to show solidarity among the Members.\(^9^0\) 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.\(^9^1\)

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-

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\(^8^5\) Id.


\(^8^7\) 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.


\(^8^9\) *Andean Fund, supra* note 88, at 236; *Newsbrief—Nov. 26, 1976, supra* note 88, at 184.

\(^9^0\) *Andean Fund, supra* note 88.

\(^9^1\) *Andean Group's Reserve Fund, supra* note 88.
An assembly whose membership is drawn from the finance and treasury ministers of their representatives has also been provided for. The Fund will be headquartered in Bogotá, Colombia. The Fund's capital is to reach $240 million within four years.

Colombia, Peru and Venezuela are each to provide $60 million in four yearly payments. Bolivia and Ecuador must contribute only $30 million each.

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

**The Andean Tribunal**

An Andean tribunal 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. 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. The tribunal will interpret measures taken by the officials, consider claims growing out of ANCOM agency decisions, and settle disputes between Member States.

**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
meetings have come to play a vital role in ANCOM's operations.\textsuperscript{104} It must be remembered that the Commission members are not of cabinet rank.\textsuperscript{105} They are, therefore, limited as to their ability to commit their governments beyond the instructions given them.\textsuperscript{106} The foreign and economic ministers do have authority, however, to commit their nations to a certain authorized course of action.\textsuperscript{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.\textsuperscript{108} Moreover, the Commission's national representatives usually follow decisions reached at these meetings if their foreign or economic ministers concur.\textsuperscript{109}

II. THE ANDEAN DEVELOPMENT CORPORATION

The Andean Development Corporation (CAF)\textsuperscript{110} is not a true part of ANCOM.\textsuperscript{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.\textsuperscript{112} Consequently, months before the Cartagena Agreement was approved, the Andean nations signed the Agreement Establishing The Andean Development Corporation (CAF Agreement).\textsuperscript{113} The CAF's purposes and functions are set forth in the CAF

\begin{itemize}
\item[104.] R. Fontaine, supra note 10, at 24-25; A. Wardlaw, supra note 1, at 11.
\item[105.] R. Fontaine, supra note 10, at 25; A. Wardlaw, supra note 1, at 11.
\item[106.] A. Wardlaw, supra note 1, at 11.
\item[107.] Id.
\item[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, 1970, 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).
\item[109.] A. Wardlaw, supra note 1, at 11.
\item[110.] The Spanish term for this organ is Corporación Andina de Fomento which is abbre-
viated 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.
\item[111.] R. Fontaine, supra note 10, at 26.
\item[112.] A. Wardlaw, supra note 1, at 37.
\item[113.] Agreement Establishing the Andean Development Corporation, February 7, 1968,
The Corporation aims to further subregional integration by encouraging the utilization of economic opportunities and resources within the subregion. Production and service enterprises are to be created and existing enterprises are to be expanded and modernized. 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.

In the performance of its duties, the CAF is subject to certain restrictions by charter. 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. In contrast, the less developed nations, Bolivia and Ecuador, may be given loans for any developmental project.

The CAF is organized in corporate form, having officers, a Board of Directors, and shareholders. The nature of CAF shareholders varies according to class. 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; and Series C stock may be issued at the Board's discretion for sale to non-ANCOM investors. Shareholders' regular meetings are held once a year, but special meetings may be called.

The Board of Directors consists of ten Members each serving

reprinted in 8 INT'L LEGAL MATERIALS 940 (1969) [hereinafter cited as CAF Agreement]; RÉGIMEN, 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.
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. The Series A and Series B shareholders each elect five Directors. The Board chooses officers and both determines and administers the CAF's policies.

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

The authorized capital of CAF is now $400 million. The original $100 million was contributed by the Member States. 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). 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). It should be noted that foreign capital participation is encouraged by CAF.

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. 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.
137. See notes 179-180 & 416-19 and accompanying text.
an authorized capital of only $100 million. This relatively small sum was inadequate for financing anything but the smaller projects.

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. 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), yet CAF's plans for physical integration projects have generated little or no enthusiasm.

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. Within its limits, the CAF has done some admirable work in financing small to medium projects.

III. ANCOM'S PLAN

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


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. This CET will apply to imports from all non-ANCOM nations, even those belonging to LAFTA.

The establishment of the CET is a two step process. The first step began in 1970 when the Commission established minimum common external tariffs for certain broad classes of goods. From 1971 until the end of 1975, Members who had lower tariffs raised them in yearly installments to at least the minimum stated level. The second stage is now in progress. 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. These CET levels will be expressed in terms of a minimum and maximum. A tariff within the range allowed by the minimum and maximum will be deemed in compliance.

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) and tariff barriers.

Under the Cartagena Agreement, the NTBs were to be removed at the end of 1970, 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.
The elimination of tariff barriers is a very complicated process under the Cartagena Agreement, as amended by the Lima Protocol. One of these lists was incorporated by reference from the previously established Common Schedule of LAFTA. These items started to be freely traded among ANCOM nations in April of 1970.

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. Items will remain on this list until they have been included in a SPID or dropped from the list. 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. Those goods dropped which are not produced in the region will be subject to immediate trade liberalization.

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

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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. *Regimen*, *supra* note 9, at 332; A. Wardlaw, *supra* note 1, at 44.
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.
168. The Cartagena Agreement, art. 53(a); A. Wardlaw, *supra* note 1, at 20.
and Ecuador obtained duty-free access to Colombia, Peru and Venezuela.\footnote{171}

Those goods not produced in the region and not reserved for Bolivia and Ecuador are on a special list.\footnote{172} Free trade in these items started in February of 1971.\footnote{173}

Under the Cartagena Agreement, each Member State was allowed to claim exceptions from the trade liberalization program.\footnote{174} Goods on the exception list will not be freely traded until 1988 for Colombia, Peru and Venezuela and 1993 for Bolivia and Ecuador.\footnote{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.\footnote{176} Colombia, Peru and Venezuela must complete the process by 1983; Ecuador and Bolivia by 1988.\footnote{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.\footnote{178}

\textbf{The Sectoral Programs of Industrial Development}

The Sectoral Programs of Industrial Development (SPIDs)\footnote{178}
were meant to provide a solution to a problem which the ANCOM members felt was keeping the subregion economically backward.\textsuperscript{180} The development of heavy industry was seen to be the key to advanced economic development in the Andean region,\textsuperscript{181} yet none of the Andean States had the minimum market size necessary to support such industry.\textsuperscript{182} Furthermore, none of the individual nations had the capital to develop heavy industry by itself.\textsuperscript{183} As a result, the subregion witnessed the growth of inefficient and undercapitalized heavy industry projects which had little or no chance of success.\textsuperscript{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.\textsuperscript{185} The Members receive what is essentially a rights monopoly.\textsuperscript{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.\textsuperscript{187} Theoretically, the economy of scale will also allow the diversification of production and the maximum use of the subregion's resources.\textsuperscript{188} Lower production costs and higher investment returns are the results hoped for.\textsuperscript{189} An equitable distribution of the benefits of the heavy industrial development is one further desired result of the SPIDs.\textsuperscript{190}

An established procedure for the creation of SPIDs is provided in the Cartagena Agreement.\textsuperscript{191} The Junta initially proposes a proposal to the concerned industry. Furnish & Atkin, \textit{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. \textit{Id.} at 32-33.

\begin{itemize}
\item \textsuperscript{180} R. \textsc{Fontaine}, \textit{supra} note 10, at 16-17; Furnish & Atkin, \textit{supra} note 179, at 35-36.
\item \textsuperscript{181} R. \textsc{Fontaine}, \textit{supra} note 10, at 17.
\item \textsuperscript{182} \textit{Id.}; Furnish & Atkin, \textit{supra} note 179, at 35-36.
\item \textsuperscript{183} R. \textsc{Fontaine}, \textit{supra} note 10, at 17.
\item \textsuperscript{184} \textit{Id.}
\item \textsuperscript{185} The Cartagena Agreement, \textit{supra} note 15, ch. IV; Furnish & Atkin, \textit{supra} note 179, at 39-40; A. \textsc{Wardlaw}, \textit{supra} note 1, at 12-14.
\item \textsuperscript{186} Furnish & Atkin, \textit{supra} note 179, at 42.
\item \textsuperscript{187} R. \textsc{Fontaine}, \textit{supra} note 10, at 17; Furnish & Atkin, \textit{supra} note 179, at 35.
\item \textsuperscript{188} The Cartagena Agreement, \textit{supra} note 15, art. 32; Furnish & Atkin, \textit{supra} note 179, at 36.
\item \textsuperscript{189} Furnish & Atkin, \textit{supra} note 179, at 36.
\item \textsuperscript{190} The Cartagena Agreement, \textit{supra} note 15, art. 32(e).
\item \textsuperscript{191} \textit{Id.} arts. 35-40; Furnish & Atkin, \textit{supra} note 179, at 39-40; A. \textsc{Wardlaw}, \textit{supra} note 1, at 13-14.
\end{itemize}
gram which is then submitted to the Commission for approval. 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. 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. Reports on the SPID proposals must be made to the Commission at least once a year.

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

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. It was felt that the subregion needed foreign investment to supply the capital and advanced technology which the area lacked as a whole. 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. Moreover, the need for foreign capital and technology often resulted in competition to at-

194. Id. arts. 36-37; A. Wardlaw, supra note 1, at 15.
196. See notes 416-19 infra and accompanying text.
197. R. Fontaine, supra note 10, at 17.
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. As a result, foreign investors were allowed access to Andean markets under conditions more favorable to them than to the host nation.

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

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

III. NATIONAL IMPLEMENTATION AND ANCOM

ANCOM decisions are not self-executing. Decisions reached

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203. Zamora, supra note 200, at 154.
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.
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. However, it has vast reserves of untapped natural resources and has managed to maintain stable growth for five consecutive years. Bolivia’s poverty traditionally has made Bolivia favorably disposed toward foreign investment. Within the limits of the ANCOM restrictions, Bolivia still views foreign investment favorably. Although ANCOM policies are generally enforced, allowable foreign investment is actively sought. Bolivia has actively supported the easing of ANCOM restrictions.

It should be noted that Bolivia recently underwent a coup, and future Bolivian attitudes toward foreign investment are therefore uncertain. It seems likely, however, that the nation’s poverty and...
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, and its economy is the most developed in the subregion. Despite economic problems, Colombia has managed to maintain a GDP growth rate of over seven percent.

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

**Ecuador**

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

**Peru**

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

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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.
226. Id.
229. R. Fontaine, supra note 10, at 37.
231. [1977] *Ecuador*, 3 *INVESTING, LICENSING & TRADING CONDITIONS ABROAD* 3 (Bus. Int'l Corp.) (June 1977) [hereinafter cited as *Ecuador*].
other.\textsuperscript{233} The revolutionary military regime governing Peru\textsuperscript{234} is generally favorably disposed towards foreign investment.\textsuperscript{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.\textsuperscript{236} The regime has a somewhat anti-capitalist orientation,\textsuperscript{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.\textsuperscript{238} Local Peruvian investors feel that the regime now may deal more effectively than before with foreign investors.\textsuperscript{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.\textsuperscript{240}

\textbf{Venezuela}

Venezuela, like Peru, is a semi-developed nation, but economic growth and development have continued despite some serious economic problems.\textsuperscript{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.\textsuperscript{242} Therefore, the government has now taken a highly selective approach to foreign investment.\textsuperscript{243} Investments which supply advanced technology, stimulate exports, locate in underdeveloped areas, or which provide jobs for Venezuelans are the most favored.\textsuperscript{244}

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\item \textsuperscript{233} R. Fontaine, \textit{supra} note 10, at 38.
\item \textsuperscript{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] \textit{Peru, 3 Investing, Licensing & Trading Conditions Abroad 2} (Bus. Int'l Corp.) (November 1977) [hereinafter cited as \textit{Peru}].
\item \textsuperscript{235} \textit{Id.} at 3; Survey, \textit{supra} note 217, at 374.
\item \textsuperscript{236} \textit{Peru, supra} note 234, at 3.
\item \textsuperscript{237} \textit{Id.}
\item \textsuperscript{238} \textit{Current Developments, supra} note 215, at 19-20.
\item \textsuperscript{239} \textit{Id.} at 19.
\item \textsuperscript{240} Survey, \textit{supra} note 217, at 374.
\item \textsuperscript{241} \textit{Current Developments, supra} note 215, at 20-21; See R. Fontaine, \textit{supra} note 10, at 33.
\item \textsuperscript{242} [1977] \textit{Venezuela, 3 Investing, Licensing & Trading Conditions Abroad 3} (Bus. Int'l Corp.) (July 1977) [hereinafter cited as \textit{Venezuela}].
\item \textsuperscript{243} \textit{Id.}; Survey, \textit{supra} note 217, at 374.
\item \textsuperscript{244} Survey, \textit{supra} note 217, at 374.
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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. 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 power vested in the state partner is a "mixed" enterprise. As will be more fully discussed later, this "mixed company" status allows such a firm to participate fully in ANCOM tariff benefits. Foreign investors have used this loophole 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. In Bolivia, the pre-coup government announced that state-owned companies would conduct business operations, either alone or jointly, with private investors. 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. The Venezuelan government is an active participant in industry through state-owned companies which have taken part in many joint ventures with foreign investors.

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

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. The one major example of expropriation occurred when foreign-owned oil-refining facilities in Colombia were nationalized with compensation.

In Ecuador, there have been few cases of nationalization since the Velasco government fell in 1972. 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. All of these nationalizations have been compensated.

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

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de Guayana joined Reynolds in an aluminum reduction venture (Alumino 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 Política 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.\textsuperscript{263} It is important to note that in cases where nationalization has proven disastrous, the present government has returned the expropriated property.\textsuperscript{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.\textsuperscript{265} Compensation has been given in these cases based on net book value.\textsuperscript{266} Nationalizations in other sectors seem unlikely.\textsuperscript{267}

\textbf{Foreign Investment Exclusions}

Under the Foreign Investment Code, foreign investment is not permitted in public services,\textsuperscript{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.\textsuperscript{269} However, Member States are given discretion to permit investment in these areas when special circumstances exist.\textsuperscript{270} Moreover, the Members may exclude foreign investment from other business sectors which they consider to be "adequately covered by existing enterprises."\textsuperscript{271}

Bolivia has generally enacted the ANCOM restrictions, but it

\begin{footnotesize}
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\item \textsuperscript{263} \textit{Latin America}, supra note 5, at 6.
\item \textsuperscript{264} Id. Return to private hands has occurred in the cases of a local foundry and the anchovy fishing fleet. \textit{Id}.
\item \textsuperscript{265} \textit{Venezuela}, supra note 242, at 5; \textbf{Law on the Nationalization of the Petroleum Industry, August 29, 1975, reprinted in 14 Int'l Legal Materials 1492 (1975)}.
\item \textsuperscript{266} \textit{Venezuela}, supra note 242, at 5.
\item \textsuperscript{267} \textit{Id}.
\item \textsuperscript{268} "Public services" are defined as those that provide drinking water, sewers, electric power, electric lighting, cleaning, sanitation, telephone service, postal and telecommunications services. \textbf{The Andean Foreign Investment Code, supra note 199}, art. 41.
\item \textsuperscript{269} \textbf{The Andean Foreign Investment Code, supra note 199}, arts. 41-43; \textit{Latin America, supra note 5}, at 8; \textit{Survey, supra note 217}, at 372; \textbf{Current Developments, supra note 215}, at 11.
\item \textsuperscript{270} \textbf{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. \textit{Id}.
\item \textsuperscript{271} \textit{Id}. art. 3.
\end{enumerate}
\end{footnotesize}
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 fishmeal 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,
all existing and new foreign-owned companies must convert into "national" or "mixed" companies. The Foreign Investment Code defines "national companies" as those having over 80% equity ownership held by "national investors" with proportionate control. A "mixed company" is one with 51% to 80% equity ownership by national investors. A company with less than 51% national equity ownership is classified as a "foreign company" and is, therefore, denied participation in ANCOM trade programs. Existing firms must have agreed to a "fade-out" schedule by December 31, 1973. New companies must agree to a fade-out schedule before any investment in that company is permitted. 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.

The Foreign Investment Code provides a definite schedule for the fade-out process whereby a foreign company becomes a national or mixed company. 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. 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. 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. 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.\textsuperscript{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.\textsuperscript{298} The 20-year periods in Bolivia and Ecuador start running two years after production begins.\textsuperscript{299}

ANCOM has developed definitive guidelines setting forth what is to be considered "national capital."\textsuperscript{300} Capital invested in any ANCOM nation by the Andean Development Corporation is considered national.\textsuperscript{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.\textsuperscript{302} Capital invested by ANCOM multinational corporations also is considered national investment.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\begin{itemize}
\item \textsuperscript{297} Id.
\item \textsuperscript{298} Id.
\item \textsuperscript{299} Id.
\item \textsuperscript{300} The Andean Foreign Investment Code, supra note 199, art. 1; \textit{Latin America}, supra note 5, at 8-9.
\item \textsuperscript{301} The Andean Foreign Investment Code, supra note 199, art. 1; \textit{Latin America}, supra note 5, at 9.
\item \textsuperscript{302} The Andean Foreign Investment Code, supra note 199, art. 1.
\item \textsuperscript{303} \textit{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.
\item \textsuperscript{304} The Andean Foreign Investment Code, supra note 199, \textit{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.
\item \textsuperscript{305} See notes 246-52 supra and accompanying text.
\end{itemize}
not exceeding 20 years. 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. Finally, since 1976, foreign or mixed companies which are engaged in tourism do not have to go through the fade-out process.

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

Registration Requirements

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

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

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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.
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.
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.322 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-

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318. Current Developments, supra note 215, at 17-18; Survey, supra note 217, at 374. Interested investors should contact:
Departmento Nacional de Planeación
Carrera 10, No. 27-27
BOGOTA, 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:
Departmento de Inversiones
Ministerio de Industrias, Comercial Integración
Juan León Mera y Roca esq.
Quito, Ecuador

Current Developments, supra note 215, 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.\textsuperscript{326}

\textit{Restrictions on Acquisitions and Takeovers}

In general, foreign acquisitions or takeovers are prohibited under the Foreign Investment Code unless certain requirements are met.\textsuperscript{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.\textsuperscript{328} Second, local or subregional investors must be given a first option to purchase.\textsuperscript{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.\textsuperscript{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.\textsuperscript{331} The ANCOM members have adopted these rules in their entirety.\textsuperscript{332}

\textit{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.\textsuperscript{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.\textsuperscript{334} All of the ANCOM nations have enacted this provision,\textsuperscript{335} but Ecuador applies the limit very flexibly.\textsuperscript{336}

\textit{Borrowing Restrictions}

The Foreign Investment Code allows foreign investors access to

\begin{itemize}
\item \textsuperscript{326} Id. \textsuperscript{327} The Andean Foreign Investment Code, supra note 199, art. 3; Survey, supra note 217, at 373.
\item \textsuperscript{328} The Andean Foreign Investment Code, supra note 199, art. 3.
\item \textsuperscript{329} Id. art. 3(b).
\item \textsuperscript{330} Id. art. 3(c).
\item \textsuperscript{331} Id. art. 4.
\item \textsuperscript{332} Survey, supra note 217, at 373-74.
\item \textsuperscript{333} The Andean Foreign Investment Code, supra note 199, art. 37; Survey, supra note 217, at 373.
\item \textsuperscript{334} The Andean Foreign Investment Code, supra note 199, art. 10; Survey, supra note 217, at 373.
\item \textsuperscript{335} Survey, supra note 217, at 373, 375.
\item \textsuperscript{336} Id. at 375.
\end{itemize}
only short-term or medium-term credit,\textsuperscript{337} and access to that credit is regulated by the individual Members.\textsuperscript{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.\textsuperscript{339} Moreover, the individual Member State governments are allowed to set limits on foreign indebtedness.\textsuperscript{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.\textsuperscript{341} In Ecuador, although the ANCOM rules apply generally, the government allows somewhat greater flexibility in obtaining local credit.\textsuperscript{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.\textsuperscript{343} In Peru, the general ANCOM rules apply, but any foreign loan must be both registered with and approved by the Central Bank.\textsuperscript{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.\textsuperscript{345} Foreign loans must be both registered with and approved by the Superintendency of Foreign Investment.\textsuperscript{346}

\textit{Access to Incentives}

Theoretically, ANCOM has a uniform incentives policy.\textsuperscript{347} Decision 49 sets forth a detailed version of such a policy.\textsuperscript{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.\textsuperscript{349} The likelihood of approval

\begin{itemize}
  \item \textsuperscript{337} \textit{Latin America}, supra note 5, at 11; \textit{Survey}, supra note 217, at 373.
  \item \textsuperscript{338} \textit{Survey}, supra note 217, at 373.
  \item \textsuperscript{339} \textit{Latin America}, supra note 5, at 11; \textit{Survey}, supra note 217, at 373.
  \item \textsuperscript{340} \textit{Survey}, supra note 217, at 373.
  \item \textsuperscript{341} \textit{Id.} at 375.
  \item \textsuperscript{342} \textit{Id.}
  \item \textsuperscript{343} \textit{Id.}
  \item \textsuperscript{344} \textit{Id.}
  \item \textsuperscript{345} \textit{Id.;} \textit{Venezuela}, supra note 242, at 20.
  \item \textsuperscript{346} \textit{Survey}, supra note 217, at 375.
  \item \textsuperscript{347} \textit{Latin America}, supra note 5, at 11; \textit{Survey}, supra note 217, at 373.
  \item \textsuperscript{348} \textit{Latin America}, supra note 5, at 11; \textit{Survey}, supra note 217, at 373.
  \item \textsuperscript{349} \textit{Survey}, supra note 217, at 373.
\end{itemize}
varies with the particular incentive sought.\textsuperscript{350} In Ecuador, foreign firms may qualify for capital, tariff, and tax incentives.\textsuperscript{351} However, the availability of such incentives varies according to the business activity and its location.\textsuperscript{352} In Peru, all foreign firms are eligible to apply for tax, tariff, and capital incentives.\textsuperscript{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.\textsuperscript{354}

\textbf{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.\textsuperscript{355} This legislation would unify the procedures for obtaining migrant worker identification papers and would guarantee free movement of workers in border areas.\textsuperscript{356} Furthermore, the labor ministers held discussions in June, 1978, concerning the comprehensive unification of the subregion's labor laws.\textsuperscript{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.\textsuperscript{358} Strikes are prohibited only in the public services area.\textsuperscript{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.\textsuperscript{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

\textsuperscript{350} \textit{Latin America}, supra note 5, at 17.
\textsuperscript{351} \textit{Survey}, supra note 217, at 375.
\textsuperscript{352} \textit{Id}.
\textsuperscript{353} \textit{Id}.
\textsuperscript{354} \textit{Id}.
\textsuperscript{356} \textit{Id}.
\textsuperscript{358} \textit{Colombia}, supra note 224, at 20.
\textsuperscript{359} \textit{Id}.
\textsuperscript{360} \textit{Ecuador}, supra note 231, at 16.
frequency.\textsuperscript{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.\textsuperscript{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 National 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).\textsuperscript{363} A compulsory negotiation procedure for employer-employee disputes is provided by the government.\textsuperscript{364} During economic crises strikes have been outlawed.\textsuperscript{365}

In Venezuela, more than 60\% of the labor force belongs to unions.\textsuperscript{366} Most unions are members of the Confederación de Trabajadores Venezolanos.\textsuperscript{367} Strikes are legal in Venezuela.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{371} The government authority must evaluate the "effective contribution" of the goods which incorporate the technol-
ogy or in some other way assess the effects of the imported technology.\textsuperscript{372}

The Foreign Investment Code regulates those contract clauses which may be included in a technology importation contract.\textsuperscript{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.\textsuperscript{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.\textsuperscript{375}

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

\textbf{Patents}

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

\begin{itemize}
  \item \textsuperscript{372} Id.
  \item \textsuperscript{373} Id. arts. 19-20.
  \item \textsuperscript{374} Id. art. 19.
  \item \textsuperscript{375} Id. art. 20.
  \item \textsuperscript{376} Id. art. 21.
  \item \textsuperscript{377} Id.
  \item \textsuperscript{378} Id.
  \item \textsuperscript{379} Id.
  \item \textsuperscript{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. In addition, a contract may not require payment for unused patents.

Decision 85 strictly regulates what may be patented. Patents may be granted only for new inventions capable of industrial application or for those creations which complement inventions. An invention which has been made available elsewhere cannot be patented. 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. 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.

**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. 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.

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).
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

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

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. 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. The venture had been started in 1974 to manufacture drill bits to be supplied to the other ANCOM nations. After two years of operation, the venture had not been able to sell one drill bit. 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. In March, 1977, the Junta suggested a program to satisfy Bolivian complaints. 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.
405. Id.
408. Id.
409. Id. at 57.
410. Id.
411. Id. at 58.
allocated to Bolivia under the various SPIDs. The other members have shown little enthusiasm for this suggestion. Moreover, Bolivia underwent a coup in July, 1978, 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. According to the original plan, all the sectoral programs were to be approved by the end of 1975. By August of 1978, however, only the metalworking, petrochemical, and automotive plans had been approved. The new deadline is 1980.

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 LAFTA 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. This emerging spirit can hardly be called Andean patriotism, but it can be viewed as a sense of

413. Id.
414. Id.


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.

common interest. 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.

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. The European Economic Community also has maintained relations with ANCOM. 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. 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.

Gordon J. Zuiderweg*

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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.
426. R. Fontaine, supra note 10, at 41.
