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Regional Industrial Integration in Developing Countries: the Model of the Andean Common Market Sectorial Program for the Petrochemical Industry

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REGIONAL INDUSTRIAL INTEGRATION IN DEVELOPING COUNTRIES: THE MODEL OF THE ANDEAN COMMON MARKET SECTORIAL PROGRAM FOR THE PETROCHEMICAL INDUSTRY

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To developing countries, regional economic cooperation offers a means of increasing intra-regional trade, thereby encouraging industrial expansion and development not feasible in small national markets.[1] For developing countries to achieve their industrial potential within such schemes requires more than the lowering of trade barriers among members, however. To be attractive to the massive investments required for the creation of production mechanisms and their supporting infra-structure, regional economic unions of developing countries require what has been termed a sectorial industrial program. Such programs allocate the industrial activities appropriate for the enlarged market in such a manner that all members are assured of a share in the benefits that are expected to accrue from the economic association. Difficulties arise when the cooperating countries are at differing stages of economic development, since the more developed partners may prove more attractive to new investments and may be able to expand their existing industrial activities in the enlarged market to a greater extent and more rapidly than the less developed members.

The 1969 Cartagena Agreement[2] established the Andean Common Market (ANCOM), for the purpose of promoting a "balanced and harmonious development of the Member States through economic integration."[3] This economic integration was to be achieved in part through the institution of sectorial programs of industrialization, established and administered by ANCOM organs.[4] On August 19, 1975, the Commission of the

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1. U.N. CONFERENCE ON TRADE AND DEVELOPMENT, TRADE EXPANSION AND ECONOMIC COOPERATION AMONG DEVELOPING COUNTRIES (1966), and TRADE EXPANSION AND ECONOMIC INTEGRATION AMONG DEVELOPING COUNTRIES (1967).

2. Cartagena Agreement, 1969, trans. in 8 INT'L LEGAL MATS. 910 (1969) [hereinafter cited as Cartagena Agreement].

3. *Id.* art. 1.

4. The Commission, as the "Supreme Organ" of ANCOM, is composed of representatives of the governments of each member country. It is the Commission

Cartagena Agreement issued its Decision 91, approving the establishment of a Sectorial Program for the Petrochemical Industry among the member states.[5] This program is directed toward transforming the petrochemicals trade deficit of the member countries to self-sufficiency by 1985, through allocation of specific industrial activities among the members of the Market. The program requires an investment of $2,500 million (1975 prices).[6] The petrochemical sectorial program is of interest because of its potential effect on regional development, international trade and foreign investment.[7] Furthermore, the program presents a unique[8] attempt to accomplish, on the one hand, free trade, and

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that is empowered to make binding decisions for the community; its decisions require the affirmative vote of at least two-thirds of ANCOM's member states, and some matters require the affirmative vote of Bolivia and Ecuador, as the least economically developed Member States, among the majority. The Board is the "technical organ" of ANCOM; its duties are generally to supervise the implementation of the Agreement and of Commission decisions and to act as permanent Secretariat of ANCOM. It is composed of three members elected by the Commission. The Board may only act in the interest of the Andean subregion as a unit and on the unanimous vote of its members. *Id.* at 913, 915, arts. 13 & 17.

5. Decision 91, GRUPO ANDINO, SEPARATA No. 33 (Aug. 1975), trans. *in* 2 INT'L TRADE L.J. ____ (1977) [hereinafter cited as Decision 91].

6. The 1975 market demand for petrochemical products reached $400 million and market supply only $200 million. The program aims at achieving a market supply of $900 million in 1980 to meet a demand of $910 million (1975 prices). GRUPO ANDINO, CARTA INFORMATIVA OFICIAL DE LA JUNTA DEL ACUERDO DE CARTAGENA, No. 48, 4–5 (Aug. 1975).

7. Since the program is an intra-regional one, international trade in petrochemicals will be diminished. Foreign investment is to be restricted. Investments in ANCOM are governed by Decision 24, Common Regime of Treatment of Foreign Capital, Trademarks, Patents, Licenses and Royalties (1970), trans. in 11 INT'L LEGAL MATERIALS 126 (1972) [hereinafter cited as *Decision 24*]. While recognizing that the investment of foreign capital and the transfer of foreign technology constitute a necessity in the development of member countries, the policy actually adopted gives preference to authentically national capital and to enterprises of the member countries. The actual effect of the Regime is to exclude foreign investment from competition with existing market facilities, to reduce to a minority position the participation of foreign capital in local companies and to diminish reliance on foreign technology while stimulating the development of local technology. *See* Schliesser, *Restrictions on Foreign Investment in the Andean Common Market,* 5 INT'L LAW. 586, 587 (1971). *See also* notes 57–65 *infra.*

8. This program is the first sectorial program to involve all members of the Andean Common Market; the first sectorial program encompassed the metalmechanic industry and was approved before Venezuela's entrance into the Common Market (Decision 57 and 57a). The metalmechanic industry program has purposes similar to those of the petrochemical program: determination of products embraced by the

on the other allocation of industrial activities — a concept that had been germinating in earlier Latin American economic schemes. The petrochemical program provides an example, and perhaps a model, that may influence other developing countries in their pursuit of industrialization.

Antecedents

The Petrochemical Sectorial Program is an outgrowth of the Central American Common Market (CACM) and the Latin American Free Trade Association (LAFTA), earlier attempts to achieve regional economic cooperation without specific allocation of industrial activities.[9] The CACM, established under the 1958 Agreement of the Regime for Central American Integration Industries and including as members Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, utilized the concept of equitable distribution of industrial activities.[10] The members of CACM

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program, distribution of plants, a program of liberation, a common external tariff and a series of complementary measures, including the commitment assumed by the countries not to authorize new foreign investment within their territories for products assigned to other member countries, nor to encourage the instigation of production of products not assigned. The metalmechanic industry program also entails the establishment of methods for avoiding the accumulation of stock from outside the subregion, and an indication of technical norms to be applied and contract terms. CONSEJO NACIONAL DEL COMERCIO Y LOS SERVICIOS DE VENEZUELA, ANALISIS CRITICO DEL PACTO ANDINO 111 (1976).

9. The Andean Common Market antecedents are discussed in Ereli, *The Andean Common Market,* 8 HOUS. L. REV. 487 (1971).

10. Article I of the 1958 Agreement on the Regime for Central American Integration Industries stipulates that the establishment of new industries and the expansion of existing industries, within the framework of Central American economic integration, shall be effected on a reciprocal and equitable basis in order that each and every Central American State may progressively derive economic advantages." Trans. in INTER-AMERICAN INSTITUTE OF LEGAL STUDIES, INSTRUMENTS RELATING TO THE ECONOMIC INTEGREGATION OF LATIN AMERICA 89 (1968) [hereinafter cited as INSTRUMENTS RELATING TO ECONOMIC INTEGRATION (1968)]. The 1958 Integration Industry Agreement was part of the 1958 Multilateral Treaty on Free Trade and Central American Economic Integration, which specified a ten-year period for the attainment of free trade. The multilateral Treaty was superseded by the 1960 General Treaty on Central American Economic Integration, which contemplated a common market fully established in no more than five years. *See* Ereli, *The Central American Common Market: Integration in Practices,* 43 TUL. L. REV. v (1968) [hereinafter cited as Ereli, CACM]. Similarly, a 1959 Agreement on the Equalization of Import Charges provided in Article 1 for tne equalization of import duties and charges within no more than five years. *Id.* at 8–10, 22–24. *See also* RAMSETT, REGIONAL INDUSTRIAL DEVELOPMENT IN CENTRAL AMERICA 63–78 (1969).

agreed to grant immediate free trade and to establish a common external tariff to products of plants that required access to the Market as a whole in order to operate efficiently even at minimum capacity. The Agreement further provided that each member should be granted one such "integration industry plant."[11] The members, in addition, took cognizance of their varying stages of development by establishing the Central American Bank to promote balanced economic development and to counterbalance significant disequilibrium among members[12] by providing graduated fiscal incentives to industrial development. Honduras was permitted to grant more incentives, Nicaragua less, and Guatemala, El Salvador and Costa Rica, the least.[13] The integration industry scheme did not prove successful.[14] The integration status had bestowed a ten-year immunity from competition by non-integration industry products; however, the members counterbalanced this monopolistic proviso by imposing various conditions and controls relating to quantity, quality, price, business practices and local participation in an enterprise's capital, with such conditions and controls enduring for twenty years.[15] The Market progressed to a free trade and a common external tariff by the end of 1965, and the restrictions on the integration industry began to outweigh the advantages, from the investors' point of view.[16] Except in Honduras, forthcoming foreign investment was equitably distributed among members, and the investors were content to let the system wither rather than attempt, as was suggested by the

11. Agreement on the Regime for Central American Integration, arts. II, IV, V, and Transitional Article, in INSTRUMENTS RELATING TO ECONOMIC INTEGRATION (1968), *supra* note 10, at 90–91, 94.

12. Art. 2 of the 1960 Agreement Establishing the Central American Bank for Economic Integration, in INSTRUMENTS RELATING TO ECONOMIC INTEGRATION (1968), *supra* note 10, at 143. As of the end of 1971, Honduras received the greatest amount in loans, followed by Nicaragua, Costa Rica, Guatemala and El Salvador. *See* Secretaria Permanente del Tratado General de Integracion Economica Centroamericana (SIECA), FINANCIAMIENTO DEL DESAROLLO 81 (1973).

13. Ereli, *Fiscal Incentives to Industrial Development in the Central American Common Market*, 22 FLA. L. REV. 175 (1969).

14. Only two integration industry plants were established, for tires and tubes in Guatemala and for caustic soda and insecticides in Nicaragua. 1963 Protocol to the Agreement on the Central American Integrated Industries, INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, INSTRUMENTS RELATING TO THE ECONOMIC INTEGRATION OF LATIN AMERICA 94 (1963).

15. *Id. See also* Ereli, CACM, *supra* note 10, at 22Z29.

16. RAMSETT, *supra* note 10, at 63–78.

Market's Secretariat, to use it as a means to accomplish joint planning of industrial development in the Market as a whole.[17]

A second regional program, the Latin American Free Trade Association (LAFTA), was created by the Montevideo Treaty of 1960,[18] adhered to by the ten South American countries and Mexico. The purpose of LAFTA was to bring into existence, within twelve years, a free trade area encompassing the majority of the products originating in the ten countries.[19] The issue of industrial allocation arose in the studies preparatory to the creation of LAFTA. Although it was recognized that the greater industrial productivity of the more developed members would require special treatment vis-à-vis the less advanced members so that the less advanced could share fully in the benefits of a regional market, the study group concluded, nonetheless, not "to accord specific countries the exclusive right to install certain industries or activities, or to impose restriction on free competition."[20] In actuality, the measures favoring the less developed members in the Montevideo Treaty pertained primarily to granting exceptions from the Treaty's trade liberalization program. Free trade concessions granted to less developed members were immune from the most favored nation clause and thus could not be shared by other members, and less developed members could invoke the escape clauses for a longer period than the one year permitted to the other members.[21] The result of LAFTA was not progress, but regression. For example, Bolivia, Ecuador and

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17. SIECA, 4 DESAROLLO INDUSTRIAL INTEGRADO 80–85 (1974). Foreign Investment during 1959–1969 was divided, in millions of ldollars, as follows: Guatemala (89.2), El Salvador (43), Nicaragua, (36.2), Costa Rica (36.1) and Honduras (13.7). On the other hand, the percentage share of each member changed in 1969 from the 1959 base as follows: Guatemala —8, El Salvador +4.1, Honduras —5.1, Nicaragua +5.2, Costa Rica +4. SIECA, 9 FINANCIAMIENTE EL DESARROLLO 100, 110 (1974). Thus Honduras not only received the smallest amount in foreign infestments but also decreased its percentage share. Although Guatemala received the greatest amount, its share of foreign investment decreased in favor of Nicaragua, El Salvador and Costa Rica.

18. Text in INSTRUMENTS RELATING TO ECONOMIC INTEGRATION, *supra* note 10, at 207.

19. *Id.*

20. U.N. Report of the Working Group on the Latin American Regional Market, Multilateral Economic Cooperation in Latin America 38 (1962).

21. Montevideo Treaty, arts. 19 (most favored nation), 26 (saving clause), 32 (less developed members). *See also* Multilateral Economic Cooperation in Latin America, *supra* note 20, at 57.

Paraguay, the least developed (with 3% of the area's industrial capacity), regressed from a pre-1960 Area trade balance to a deficit in 1962–1967 in favor of Argentina, Brazil and Mexico (possessing an aggregate of 80% of the Area's industrial capacity). The middle group, Columbia, Chile, Peru and Uruguay (with 17% of the Area's industrial capacity), doubled its trade deficit within the five-year period in favor of the most developed members. Such regressions resulted from the tendency, in an economic grouping, of the more industrialized, and hence the relatively more developed, nations to benefit from a free trade program at the expense of the less industrialized members, and from the reluctance of the less industrialized members to perpetuate the trend.[22]

THE PETROCHEMICAL PROGRAM

1. Assignment

The ANCOM Petrochemical Sectorial Program encompasses 161 petrochemical products and assigns 56 of those to one, some or all members.[23] Bolivia and Ecuador receive preferential treat-

22. Ereli, *Private Investment Aspect of the Andean Common Market,* SOUTHWESTERN LEGAL FOUNDATION SYMPOSIUM ON PRIVATE INVESTORS ABROAD 333, 334 (1976).

23. The list of the Program's products appear as Annex 1 and the list of non-assigned products in Annex III to Decision 91. Of the 56 assigned products, twenty-one products are shared — seven by all members, six products by three members and eighteen by two members. Annex IV to the Decision. *See* GRUPO ANDINO CARTA INFORMATIVA, *supra* note 6, at 5–7; INSTITUTO PARA LA INTEGRACION DE AMERICA LATINA, BOLETIN DE INTEGRACION No. 117, 494 (Sept. 1975), from which the following table was prepared:

	No. products assigned exclusively	*No. products shared, with (1) or (2) other members (total 24 products)*	*No. products assigned (total 56 including 7 shared by all members)*	*Value of 1985 production in 1975 prices (million dollars)*	*Required investment in 1975 prices (million dollars)*	*Productive capacity (thousand metric tons)*
Bolivia	1	8:(7)(1)	16	120	250	200
Ecuador	10	4:(3)(1)	21	160	320	N.A.
Columbia	3	8:(5)(3)	18	370	600	56
Chile	7	8:(6)(2)	22	230	380	400
Peru	2	10:(6)(4)	20	260	420	385
Venezuela	2	15:(10)(5)	24	360	530	700
Totals	25			1,500	2,500	2,245

ment under the Program, because these are the least developed Member States. The products of these two countries are thus granted more extensive free trade and their production mechanisms and "market" are accorded greater protection against competition. The production of assigned products can be undertaken only by plants located in the member countries receiving assignments for them, while products not assigned to any member, totalling 105, may be produced in any and each member.[24] The assignments should allow each member to develop an efficient and integrated petrochemical complex, capable of taking advantage of its available natural resources, so as to achieve some degree of specialization in order to satisfy Market demand and promote exports to other markets.[25]

Members favored with assignments are required to initiate production within a specified time limit. Article 6 specifies that thirty months from the date of the Decision, members must present to the Board technical-economic information on products assigned to them whose production has not yet commenced, while Article 8 requires members to initiate the production of their assigned products no later than December 31, 1982, unless the Board extends such deadline. Nonetheless, if during 1978, 1981 or 1983 it appears to the Board that members may not be able to meet the time limits indicated in Articles 6 and 8, or the latter's extension, if any, the Board may suggest appropriate measures to the Commission, including changing the assignment or granting permission to a member not sharing in the assignment to initiate production.[26]

Members not sharing in assigned products may not encourage their production. Article 26 of the Decision forbids such states to grant state aid, credit, custom exemptions, tax or exchange benefits or any other such measure to such products. Article 27 further enjoins non-assignees from authorizing direct foreign investment in their territories and from concluding contracts for the importation of technology. This is an effective restriction, because direct foreign investments and agreements for technology transfer must be approved and registered by the competent national authority of the recipient country.[27]

24. Decision 91, *supra* note 5, arts. 3 & 4.
25. CARTA INFORMATIVA, *supra* note 6, at 3, 6–7.
26. Decision 91, *supra* note 5, art. 9.
27. Decision 24, *supra* note 7, at 130, 132, arts. 5 & 18.

The duration of Articles 26 and 27 restrictions is limited by Article 28. Non-assignees may initiate the production of products assigned only to Columbia, Chile, Peru and/or Venezuela after December 31, 1986; after the end of 1991 they may initiate production of products assigned exclusively to Bolivia and Ecuador. The state aid and investment authorization restrictions of Articles 26 and 27 remain in effect until three years prior to the above dates.[28] As to products shared by Bolivia or Ecuador with one or two other members, Article 28 provides that the Board may propose to the Commission prior to the end of 1983, if the Board deems it necessary, that non-assignees begin to share in the assignment, but this must not affect the equitable participation by Bolivia and Ecuador in the intra-Market trade in such products until the end of 1991. Thus, in respect to products shared by one or two members with Bolivia and Ecuador, the initiation of production by non-assignees may begin after 1991 rather than 1986, unless the Commission specifically determines during 1983 that some or all of the non-assignees share in the assignment.

2. External Tariff

All products encompassed in the Program are subject to a Common External Tariff.[29] Members whose national tariff is higher or lower than the Common External Tariff must adjust to the latter beginning January 1, 1977, and ending on December 31, 1980, through five annual and equal installments, except for Bolivia and Ecuador who may do so in ten annual, equal and successive periods.[30] Each member is free to accelerate the time table, but must apply no less than the Common External Tariff duties to foreign products if the same products are already produced in the Market and also within six months prior to the

28. Eight products are assigned exclusively to Bolivia and Ecuador, twenty-six products are assigned to the rest of the members and ten products are shared by one or two members with Bolivia and Ecuador. Decision 91, *supra* note 3, arts. 3 & 4 & Annex IV.

29. The Common External Tariff appears as Amer V to Decision 91, *supra* note 5. The tariff levels are based on *ad valorem* duties on C.I.F. price at 20% on twelve products, 25% on ten products, 30% on 135 products and 35% on four products.

30. Decision 91, supra note 5, art. 21.

initiation of production of new products.[31] The Common External Tariff cannot be unilaterally modified, suspended or rebated, unless the imports are used in products to be exported outside the Market, provided, however, the Board verifies and determines there is insufficient Market production of the imported products.[32]

On the other hand, the Common External Tariff cannot affect lower tariff concessions already granted by any Market member to any LAFTA member which also inure to the benefit of other LAFTA members pursuant to the Montevideo Treaty's most favored nation clause.[33] Thus the Common External Tariff is common only against non-LAFTA countries, but may be uncommon against LAFTA members; the duties to be paid by the latter vary for each Market member depending on the concession it already granted.[34]

3. Free Trade

The Program provides for immediate and deferred free trade to products originating in the Market. The products subject to immediate free trade comprise three groups. First, the majority of products not assigned to any member, 77 out of 105 and constituting almost half of the Program's 161 products, are in free trade among all members.[35] Second, the rest of the products not assigned to any member, totaling 28, are in immediate free trade if originating from Bolivia or Ecuador.[36] Third, products in the group of 49 products assigned to one, two or three members only are also subject to free trade in the territories of non-assignees.[37]

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31. Decision 91, *id.* arts. 19, 20 and 22. Existing production must be notified to the Board and the Common External Tariff applies upon the Board's verification of production and communication to other members. Similarly, a member must notify the Board regarding the approximate date for the initiation of production, together with pertinent information, with the Board notifying members within 60 days of the date for the application of the Common External Tariff. Thus, for the common external tariff to apply six months prior to production, the information must be submitted at least eight months prior to the initiation of production.

32. Decision 91, *supra* note 5, arts. 23 & 30.

33. Cartagena Agreement, *supra* note 2, at arts. 68, 113 & 114.

34. Free trade concessions among the members of the Andean Common Market are exempt from LAFTA's most favored nation treatment and thus do not inure to the benefit of other LAFTA countries. Ereli, *supra* note 9, at 491, and nn. 31-33 *supra.*

35. Decision 91, *supra* note 5, art. 15(a) and Annex III groups A and B.

36. Decision 91, *id.* at 15(b) (iii) and Annex III Group C.

37. Decision 91, *id.* at art. 12.

All products not included in the above categories will be subject to a free trade regime no later than January 1, 1981; however, Bolivia and Ecuador may retain their national protection until December 31, 1985.[38]

The duties applicable to products not in immediate free trade among all members are of two levels. Bolivia and Ecuador's duties on products from other members are equal to those of the Common External Tariff applicable to extra-Market products.[39] Thus, in these members, foreign products may have an advantage over products from the four developed members if price, quality, assurance of supply or terms of payment give the former a competitive edge over the latter. This situation will cease at the end of 1985, when the Market products will enjoy free trade in Bolivia and Ecuador. The level of tariff that the four developed members may apply among themselves is uniform, and corresponds to the lowest tariff that existed in any of the four members, but no higher than the Common External Tariff.[40] Where the duties on products traded among the four members are lower than the Common External Tariff, the lower duty may correspond to a concession granted by a Market member to LAFTA members. Hence, the latter may be able to compete with products of other Market members until free trade obtains between the four developed Market members, *i.e.*, until December 31, 1980.

The Program thus contains measures aimed at minimizing foreign competition while still allowing members to safeguard their production from intra-Market competition. First, regarding the 28 products not assigned to any member, and not in free trade except when originating from Bolivia or Ecuador, the four developed members need reduce their tariff against each other in five annual, successive and equal installments of 20% a year, while Bolivia and Ecuador will do so in ten installments, thus granting a progressively increasing margin of preference to Market products.[41] Second, as to products assigned to members, with each maintaining its tariff until the end of 1980, or 1985 in case of Bolivia and Ecuador, the Decision requires the members who have not initiated production of an assigned product, or who have not achieved a sufficient level of production to satisfy internal de-

38. Decision 91, *id.* at arts. 12–15.
39. Decision 91, *id.* at n.1 to Annex IV.
40. *Id.*
41. Decision 91, *supra* note 5, art. 15(b).

mand, to suspend the tariff on products of another member or members sharing in the assignment.[42]

The Decision forbids members from applying any safeguard clauses of any kind against the importation of the products subject to the Program if originating in and proceeding from the members. This provision modifies the Cartagena Agreement, which allows escapes from free trade in limited circumstances.[43] Until the Commission defines, at the Board's suggestion, the criteria for origin, products are of origin when produced in Members with inputs of raw, semi-finished or finished materials produced in the Market, or with imported inputs, provided the duties of the Common External Tariff were levied.[44]

The Decision further disallows Members to grant any subsidy to intra-Market export or exemption from, or rebate of, internal sales taxes.[45] Members may, however, continue the promotion of extra-Market export contained in their legislation, thus posing the possibility that Market production will be diverted from intra-Market supply to extra-Market export.[46] To obviate such a result, the Decision obligates members assigned products to give priority in their export to supplying the Market. This obligation also encompasses some products not assigned to any member. The members further undertake to give preference in their exports of the remaining non-assigned products to meeting Market demand.[47] On the other hand, the Decision contemplates that members sharing an assignment also share the Market by suggesting that such members adopt measures assuring their equitable Market participation, especially for products originating from Bolivia and Ecuador.[48]

4. Export Production

Members not sharing assigned products may nonetheless be immune from the restrictions of Articles 26 and 27 prior to the

42. Decision 91, *supra* note 5, art. 14.

43. *Compare* art. 32 of Decision 91, *supra* note 5, *with* arts. 78–80 of the Cartagena Agreement, *supra* note 2.

44. Decision 91, *supra* note 5, art. 25.

45. Decision 91, *supra* note 5, art. 30.

46. *Id.*

47. Decision 91, *supra* note 5, art. 29. The Article further stipulates that priority and preference be achieved through reciprocal information and, if necessary, the Board may propose to the Commission measures to assure timely and orderly supply of the Market.

48. Decision 91, *supra* note 5, arts. 35 & 36.

dates specified in Article 28, provided the entire production output is destined exclusively to third countries during the interval between the initiation of production and Article 28 dates for Market entry.[49] The Board may authorize the Market sale of such export-destined products prior to the time allowed in Article 28, for determined times and in specific quantities to satisfy Market demand if production from Members assigned these products does not exist or is insufficient.[50] Such permission by the Board is further qualified by two requirements. First, when an enterprise in a member or members assigned the product has begun production, the Board's permission is conditioned on the existence of a sales agreement between such an enterprise and the export plants.[51] Second, since the Program's products not in immediate free trade will be so after 1980 (or 1985 in Bolivia and Ecuador), while Article 28 permits production to start only after the end of 1986 (1981 in Bolivia and Ecuador), the Board's permitted Market sale of export products during such interval is subject to the payment of the External Common Tariff duties, or internal taxation of equivalent amounts if the sale is to a member in whose territory the export plant is located.[52] The Board may authorize the reduction or suspension of such duties or taxes in a proportion that does not disturb the Market share of members who were assigned such products.[53]

The Decision further requires the member in whose territory the export plant is located to conclude an agreement with the latter for a period ending no earlier than the dates specified in Article 28. This agreement must include, as a minimum, enumerated conditions,[54] namely, an undertaking to export the totality of the production to third countries, except as otherwise permitted by the Board; the obligation to utilize inputs produced in the Market when in sufficient production; the obligation to grant a preferred option, open for a reasonable time and with reasonable condition, to nationals of the members to whom the products were assigned for 15% participation in the export enterprise capital with the right to appoint a director who will have

49. Decision 91, *supra* note 5, art. 41(b); *see* nn.27 & 28 *supra.*
50. Decision 91, *supra* note 5, art. 44.
51. Decision 91, *supra* note 5, art. 45.
52. Decision 91, *supra* note 5, art. 44.
53. *Id.*
54. Decision 91, *id.* at art. 41.

the determinative capacity regarding sales to the Market members; the obligation to keep special books that permit the verification of the export plant activities; and monetary penalties in case of noncompliance with contractual or legal obligations.[55]

The trials and tribulations of the export plant are not yet over. The government of the member in whose territory the export plant is to be located must transmit the agreement to the Board, together with information about the measures that the government proposes to adopt in order to ensure compliance. The Board, in turn, will transmit the agreement and information to other members. Within 90 days thereafter the Board on its own initiative, or at the request of a member, may formulate an observation to the government in whose territory the plant will be located, and shall present the case to the Commission if the Board determines that there was an infringement of the agreement's requisites or that the plant's installation will prejudice other members, especially those with assignments.[56]

Finally, Decision 91 is not clear on whether the export plant must be limited to the production of non-assigned products in order to escape from the restrictions of Article 26 and 27. Since the limitations of Articles 26 and 27 apply neither to products assigned to members nor to products not assigned to any member, there seems no legal necessity to forbid the commingling of non-assigned products destined exclusively to third countries since the latter are also immune from Articles 26 and 27, and may enter intra-Market free trade on the dates stipulated in Article 28.

5. Financing and Foreign Investment

The Program requires reliance on foreign direct investment as well as on the importation of foreign technology, both subject to the restrictions of the Common Regime on the Treatment of Foreign Capital, Marks, Patents, Licenses and Royalties.[57]

The Regime defines direct foreign investment as contribution from abroad to the capital of the enterprise either in foreign exchange, industrial plants, machines or equipment. Thus, patents, marks and knowhow are not considered as foreign capital, and

55. Decision 91, *id.* at Annex VIII.

56. Decision 91, *id.* at art. 42.

57. Decision 24, *supra* note 7; *see* Schliesser, *supra* note 7.

cannot be capitalized by the foreign investor.[58] On the other hand, investment of national currency obtained from resources that may be transferred abroad as a right also qualify as direct foreign investment.[59] Foreign enterprises established after the effective date of the Regime are required to agree that they will transform themselves to a "mixed enterprise" in no less than fifteen years from the date production started, and within twenty-two years in case they are located in Bolivia or Ecuador.[60] The divestment percentage is also regulated: national participation in the enterprise's capital must be no less than 15% when production starts (5% for Bolivia and Ecuador within three years after the initiation of production), no less than 30% at the end of five years (10% for Bolivia and Ecuador within seven years), no less than 45% at the end of ten years (35% within fourteen years for Bolivia and Ecuador), and no less than 51% at the end of the divestment periods.[61] The local majority must be reflected not only in the enterprise's capital, but also in the technical, administrative, financial and commercial direction of the enterprise, otherwise it would still be considered a foreign rather than mixed enterprise and not entitled to free-trade benefits.[62] The enterprise may also be classified as mixed with only 30% local capital provided the latter belongs to the state and the state possesses a determinative capacity in the fundamental decisions of the enterprise.[63]

The Common Regime limits the foreign investor right of profits remittance to no more than 14% of the direct foreign investment annually.[64] Thus the foreign investor may wish to increase this annual remittance by the addition of royalties for knowhow, or through credit arrangements. The Common Regime forbids, however, the payment of royalties for intangible techno-

58. Decision 24, *id.* at 128, 134, arts. 1 & 2.

59. Decision 24, *id.*, art. 1.

60. Decision 24, *id.* at 136, art. 30.

61. *Id.*

62. Decision 24, *id.* at 126, 135, arts. 1 & 27.

63. Decision 24, *id.* at 138, art. 36 and Decision 47, *Standards Applicable to Investments Made by the Andean Development Corporation and any of the Member Countries, trans. in* 11 INT'L LEGAL MATS. 373 (1972). The state may participate in the mixed enterprises directly or through a semi-state agency. In the latter case, the state must own more than 80% of the agency's capital and must participate in determining the agency's affairs.

64. Decision 24, *supra* note 7, at 138, art. 37.

logical transfers between a foreign parent and its affiliate or between affiliates thereof, limits the interest rate on credit among such enterprises, and confines foreign enterprises to short-term local borrowing.[65]

Because of the above restriction, the foreign investor may have to decide whether he prefers to retain control over the enterprise for a fifteen year period, or twenty-two in case of Bolivia and Ecuador, or whether the establishment of a mixed enterprise at the outset may prove more advantageous.

CONCLUSION

The sectorial programs in the Andean Common Market, as exemplified by the petrochemical program, reveal the progression of the economic cooperation schemes of Latin America from the concept of free trade as a means to industrial advancement through joint industrialization plans under which the industrial development of each member is intended to be achieved by a combination of free trade, a common external tariff and distribution of industrial activities. The success of such programs requires agreement on the manner in which an equitable distribution of industrial activities can be achieved, on the means of arriving at some degree of interrelated specialization, on achieving adequate regional supply and on foreign exchange earnings. A balance must be reached between regional competition and the restriction of regional competition so that each member can make the best use of its allocation and so that special advantages can be accorded to relatively less developed members.

The legal effect of the Cartagena Agreement remains to be ascertained in many respects. Under the Agreement, certain law-making powers were given to the ANCOM Commission and Board, but the Agreement did not provide a judicial body of any kind. This might present a problem should the scope of powers transferred and those reserved be questioned. Thus, some assessment must be made of the binding effect of the Commission's decisions in terms of international law.[66]

65. Decision 24, *id.* at 132, 134, arts. 16, 17 & 21. Additionally, Article 15 of Decision 24 forbids governments from endorsing or guaranteeing directly or through semi-official institutions external credit transactions by a foreign enterprise in which the state does not participate.

66. For a detailed discussion of the legal ramifications, *see* Bluth, *The Andean Pact and Its Members States — A Study in Certain Formal Aspects of Subregion*

Early in 1976, it was reported that ANCOM was experiencing difficulties occasioned mostly by a failure to agree on the establishment of industrial development programs, on setting a common external tariff and on membership of the ANCOM Board.[67] The Board membership problem was eventually solved. Article 62 of the Cartagena Agreement stipulates that the common external tariff was to have been submitted by the Board to the Commission for approval by the end of 1973; Commission approval was to have been given within two years. However, after numerous meetings at the technical and political levels to determine criteria for setting tariffs, agreement was not reached in the time specified. The 1975 proposal of the Board on the common external tariff did not merely compile duties: it comprised a series of provisions for constituting a base for a tariff vis-à-vis third countries, and included such tariff-related matters as commercial taxes, internal taxes, exceptions and special considerations arising out of the geographical situation of Bolivia.[68] The outcome of the deliberations was that extensions were agreed to concerning the common external tariff and concerning the individual development programs.[69]

Among other problems encountered by the member countries were some which directly concerned the sectorial programs and which reflect the inclination of the member countries toward extending the terms fixed for implementation of the programs, in spite of their affirmation of the program's goals. Among the problems here were the need for according adequate attention to establishing effective criteria for protection and the need to generate the appropriate employment and use of the technology among the six members. Difficulty also arose with regard to the financing of commercial ventures by the Andean Investment Fund, and with ascertaining the amount of national income available and its best utilization.[70] Further, it was felt that some provision should be established for compilation of statistical data

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Integration, in SOUTHWESTERN LEGAL FOUNDATION SYMPOSIUM ON PRIVATE INVESTORS ABROAD 367 (1976).

67. Roberts, *Latin American Economic Integration,* 8 LAW. AMERICAS 474 (June 1976).

68. ANALISIS CRITICO DEL PACTO ANDINO, *supra* note 8, at 118.

69. Roberts, *supra* note 67.

70. ANALISIS CRITICO DEL PACTO ANDINO, *supra* note 8, at 118.

on the number and description of products originating in the subregion and for determining the amount of waste.[71]

Chile withdrew from ANCOM effective October 30, 1976, terminating thereby its participation in the Petrochemical Sectorial Program.[72] Hence products assigned to Chile would have to be reassigned among the remaining five members. Chile's dissatisfaction stemmed primarily from ANCOM restrictions on foreign investment, exacerbated by political differences over the territory gained by Chile from Bolivia and Peru, two other ANCOM members. This territorial gain cut off Bolivia's access to the Pacific Ocean.[73]

The fate of ANCOM is thus uncertain, and with it the fate of this attempt to allocate industrial activities among cooperating nations. However, joint industrial programs, though sophisticated and perhaps idealistic, may not be beyond realization. Even a partial success of the petrochemical program may prove the efficacy of such plans. Perhaps with modification other developing countries may use similar programs to best advantage.

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71. *Id.*

72. Int'l Trade Rep. Export Shipping Manual 3 : -5 (No. 1152, November 16, 1976). Chile renounced all rights and obligations under the agreement with the exception of participation in Decision 40 on double taxation, Decision 46 on regional multinationals, Decision 56 on highway transport, and Decision 94 on the Andean road system. These four decisions will be administered by an ANCOM-Chilean commission. *Id.*

73. Chilean Ambassador to the United States Manuci Trucco cited excessive levels of protectionist barriers resulting in inefficient local industries and lack of capital as a further cause for Chile's withdrawal. Chile's 1975 gross product (GNP) was 12 to 15% below the 1974 level, while unemployment was nearly 20%. Journal of Commerce, November 16, 1976, at 3, col. 1.

During the 11th Ordinary Session, the Commission of the Cartagena Agreement approved the following decision:

DECISION 91*

Proposal 44 of the Board on the Sectorial Program of the Petrochemical Industry,

THE COMMISSION OF THE CARTAGENA AGREEMENT

Having considered: Articles *32, 33, 34, 35, 93,* and 94 of the Agreement, and Proposal 44 and 44 Mod/1 of the Board.

Decides—

To approve the following sectorial program of development of the petrochemical industry.

I. Objectives of the Program

Article 1. — The Member Countries adopt the present program for the purpose of attaining the objectives stated in Article *32* of the Cartagena Agreement and to promote the efficient development of the petrochemical industry in the Subregion.

II. Products of the Program

Article 2. — The products covered by this program are enumerated in Annex I, identified and classified according to the NABANDINA.

III. Location of the Plants

Article 3 — The manufacture of assigned products enumerated in Annex II will be carried on at plants located or to be located in each Member Country, in accordance with the distribution presented in said Annex.

Article 4. — Manufacture of non-assigned products listed in Annex III may be carried out in any of the Member Countries.

Article 5. — When manufacture in a Member Country of some assigned product, already occurs or is instituted communication to this effect is to be made to the Board, and technical-economic information regarding such production is to be submitted. The Board, having previously analyzed the information, will verify the production and will communicate this information to the rest of the Member Countries, in order to effectuate the mechanisms of the present Decision.

Article 6. — Within 30 months following the approval of the present Decision, the Member Countries must present technical-economic information on the assigned products whose manufacture has not been initiated. In case of an exception, as determined by the Board, the term designated in this Article can be extended for once only for up to 12 months.

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* Translated by Joyce Seunarine, J.D. Candidate, University of Maryland School of Law.

Annexes I to VI are not included in this translation, although referred to in the text. These Annexes consist of tables containing the following information: Annex I lists each petrochemical product covered by the Program; Annex II gives the product assignment for each member country; Annex III lists unassigned petrochemical products; Annex IV lists Tariff rates for each product; Annex V gives the Common External Tariff; and Annex VI lists product exceptions by country.

Article 7. — Within 45 days following the approval of the present Decision, the Board will supply to Member Countries guidelines for the presentation of the information referred to in Articles 5 and 6. The Petrochemical Committee referred to in Article 39 will recommend in its first meeting those modifications which it deems pertinent.

Article 8. — Member Countries will begin the manufacture of the products assigned in the present Program by December 31, 1982, at the latest. Notwithstanding, the Board may by resolution extend this term on the basis of conclusions obtained in the evaluations discussed in Article 37.

Article 9. — In making the evaluations discussed in Article 37, the Board will analyze especially the status of the products with respect to those Member Countries that have not complied within the term indicated in Articles 6 and 8 or within any exception that has been given. The Board, if such is the case, will propose to the Commission such measures as a change of assignments, the suspension of the commitments stipulated in Articles 26 and 27, the suspension of the benefits of the Program of Liberation, or the adoption of new methods of accomplishing the Program.

Article 10. — In the case of assignments shared by all the Member Countries, the Board, after analysis of the technical-economic information mentioned in Article 6, may direct terms different to those established in Article 8 for the initiation of production in Bolivia and Ecuador. Without prejudice to the stipulations of Article 9, any postponement or maturity of said terms will not be an implication for these countries that it would be impossible to carry on production. Nevertheless, if said production is commenced after the new term indicated by the Committee the countries cited may not resort to the provisions of Article 36.

IV. Liberation Program

Article 11. — Within 30 days following the approval of the present Decision, Member Countries shall eliminate any kind of restrictions that are in effect concerning the importation of products of the Program originating in and proceeding from other Member Countries.

Article 12. — Within 30 days following the approval of the present Decision, those Member Countries not favored with the assignment of a product shall totally eliminate duties imposed upon the importation of that product when originating in or proceeding from any country favored with the assignment.

Within the same period stipulated in this Article, each Country not favored with the assignment of a product will adopt and apply to the importation of such product, when originating in or proceeding from the other Member Countries not favored with the same assignment, the same duties applicable to the importations from outside the Subregion, and will eliminate them totally by December 31, 1980.

Article 13. — Member Countries favored with an assignment will adopt duties equal to those applied to the importations of the product coming from outside the Subregion, when such importations of the same product originate in Member Countries not favored with the same assignment, and will eliminate them totally by December 31, 1980, with respect to Chile, Peru and Venezuela, and by December 31, 1985, in the case of Bolivia and Ecuador.

Article 14. — When a product has been assigned to more than one Member Country, the following procedure is to be used in the elimination of duties on the importations between them of the respective products.

(a) The Member Countries will adopt within 30 days following the approval of the present Decision duties not exceeding those in Annex IV, Part I.

(b) The former duties will be totally elimniated by December 31, 1980, at the latest, on the part of Colombia, Chile, Peru and Venezuela; and on December 31, 1985, on the part of Bolivia and Ecuador.

Those Member Countries that share an assignment and that wish to do so, may agree between them to lower the duties on reciprocal importations of such products at an accelerated rate, in which case they will apprise the Board and the Commission of their agreement.

So long as the Member Countries favored with the assignment of a product have not initiated their respective productions, or when their production is insufficient to supply their internal market, those countries may suspend the application of duties to the importation of such product when the product originates in and proceeds from the other Member Countries favored with the same assignment whose assigned production has already been begun. Such suspension should be limited to a quantum of importation at least equal to said deficiency.

Article 15. — The duties affecting the importation of non-assigned products enumerated in Annex III will be eliminated by all Member Countries in the following manner:

(a) Products included in Groups A and B will become free of duty within 30 days following the approval of the Present Decision.

(b) Products in Group C will comply with the following regulations:

i) Within 30 days following the approval of the present Decision, Colombia, Chile, Peru, and Venezuela will adopt and will apply the duties listed for them in Part II of Annex IV. They will eliminate them in annual, lineal, or automatic form commencing January 1, 1977, and total elimination is to be achieved by December 31, 1985.

ii) The same countries mentioned in the preceding paragraph will eliminate duties totally for the products in question, when they originate in and proceed from Bolivia and Ecuador, 30 days following the approval of the present Decision.

iii) Bolivia and Ecuador will adopt and will apply to each product duties not exceeding those that apply to them in Part II of Annex IV and will partially eliminate duties in annual, lineal, or automatic form commencing January 1, 1977, with total liberation by December 31, 1985.

Article 16. — Without prejudice to the provisions in Articles 12 and 13, the Member Countries may not apply duty rates higher than the rate levels of the Common External Tariff for importation of products originating in and proceeding from the other Countries.

Article 17. — For the achievement of the aims of the Liberation Program and of the Common External Tariff, Member Countries may set and impose duties corresponding in terms to a single ad-valorem duty based upon the CIF price for the merchandise.

V. Common External Tariff

Article 18. — Member Countries are obliged to apply the duties of the Common External Tariff that appear in Annex V to the importation of the product covered by the Program, when such products originate in or proceed from countries outside the Subregion.

Article 19 — Member Countries will apply duties not lower than those of the Common External Tariff to the products covered by the Program before 6 months from the date on which production is to be initiated. To this effect, the interested Member Country shall communicate to the Board the approximate date of the commencement of production, accompanied by pertinent information. The Board, after examination and verification, will present to the rest of the Member Countries within 60 days, the date on which the duties referred to in this Article are to be imposed.

Article 20. — If production exists on the date on which the present Decision is approved, Member Countries not mentioned in Article 5 will apply duties not less than those of the Common External Tariff to the respective products, once the Board has verified production and communicated same to the Member Countries.

Article 21. — After December 31, 1976, Member Countries will institute a process whereby those national tariffs in force on that date will approximate those of the Common External Tariff for those products to which Common External Tariff rates have not yet been applied. The process will be completed in annual, lineal, and automatic form, with full application by December 31, 1980 with respect to Colombia, Chile, Peru, and Venezuela, and December 31, 1985, in the case of Bolivia and Ecuador.

Article 22. — Without prejudice to the provisions of the preceding Articles, any of the Member Countries may adopt other methods of approximating the duties of the Common External Tariff, provided that these measures constitute an acceleration of the approximation process.

Article 23. — The norms of the Common External Tariff are obligatory for all Member Countries. They may not defer their application, unilaterally alter the common duties, nor adopt any means by which their purpose will be altered. Consequently, from the moment of adoption of the Common External Tariff or from initiation of the approximation process, in conformity with the stipulations of Articles 19, 20, and 21, the products covered by the Program will not be accorded any special treatment that would modify the common tariff rate; neither will they be favored with a reduction, suspension, elimination, or partial or total devolution of the same.

Article 24. — The duty rates of the Common External Tariff given in Annex V may be modified by the Commission upon the proposal of the Board in order to reconcile the need for stimulating the efficiency of Subregional production with that for adequate protection of said production.

VI. Origin

Article 25. — As long as the Commission, on the Proposal of the Board, has not adopted the special norms of origin referred to in Article 82 of the Cartagena Agreement, the advantages of the Liberation Program will be available for Program products provided that the products are manufactured in the territories of Member Countries, whether from inputs produced in the Subregion or imported from outside the Subregion, and provided that, in the latter case, the appropriate duties of the Common External Tariff appearing in Annex V or in the corresponding Minimum Common External Tariff have been paid on such importations.

VII. Complementary Measures

Article 26. — The Member Countries obligate themselves not to encourage in their respective territories the manufacture of products listed in Annex II that have not been assigned to them.

Thus, they are obliged not to grant state assistance, credits, tariff benefits, taxes, or changes of any kind in the manufacture of the assigned products of any other

Member Countries and not to adopt methods of any nature that might detract from the objectives of the Program.

Article 27. — Without prejudice to the provisions of Article 41, the Member Countries obligate themselves neither to authorize direct foreign investment in their territories nor to enter contracts for the importation of technology for the manufacture of products included in Annex II to which they have not been assigned.

Article 28. — Member Countries obligate themselves not to adopt measures to initiate productions that have not been assigned to them under the present Decision, until December 31, 1986, in the case of products already assigned to Colombia, Chile, Peru and Venezuela, and until December 31, 1991 in the case of products assigned to Bolivia and Ecuador.

Nevertheless, the commitments accepted by the countries under Articles 26 and 27 will remain in force until 3 years before the respective dates indicated above.

When dealing with assignments divided between Bolivia and Ecuador and one or another of the other Member Countries, the Board will effectuate before December 31, 1983, an analysis of the development of the subregional market and of the functioning of the respective plants with the object of formulating a proposal for the Commission to authorize, if necessary, that one or more Member Countries not favored with the assignment might share in it. In no case will new production be allowed to affect the market participation accorded to Bolivia and Ecuador under the agreements and measures established in Article 26 of the present Decision, before December 31, 1991.

Article 29. — Member Countries obligate themselves to give priority in their exports to supply the demands of the subregional market for the products assigned and enumerated in Group A of Annex III. Regarding the other products of the Program, Member Countries will strive toward granting preference in their exports to supplying the subregional market.

To this effect, Member Countries will remain reciprocally informed through the Petrochemical Committee and will inform the Board regularly concerning the flow of supply and demand for the Program products.

The Board will assure that the commitments mentioned in this Article are fulfilled, and will propose to the Commission the adoption of measures tending toward providing a regular supply and access to said products for all Member Countries.

Article 30. — Except for the exemption or refund of internal taxes applicable to merchandise, Member Countries will not be permitted, in any case, to supply subsidies of any nature, whether by way of direct aid or by any other measures, such as exemptions, restitutions, or rebates of other internal taxes in order to encourage exportation of the program products to other Member Countries.

As long as the Commission does not approve norms for harmonizing systems of export aids, Member Countries might apply their own national means of encouragement to countries outside the Subregion. Nevertheless, exemptions, rebates or restitution of duties on the importations can only be granted when, after the Board has previously checked, it is determined that the regional supply of inputs is insufficient.

Article 31. — When a Member Country favored with an assignment is close to initiating production and has reason to believe that such product will accumulate in the Subregion due to importations from third countries in such quantities that might prejudice the new production, the Member Country will communicate the same to the Board with its reasons for so believing. The Board will examine said evidence and other evidence that might have been collected and, if it discovers that the fear of the country concerned is well based, will rcommend to the rest of the countries the

adoption of necessary measures to eliminate such prejudice. Among such measures the Board might include the full and immediate application of the duty rates of the Common External Tariff.

Article 33. — So long as Subregional technical norms have not been adopted, the manufacture of Program products can be accomplished through subjection to the technical norms or specifications approved by the competent agency of the Member Country where production occurs.

The Petrochemical Committee will collaborate with the Board in preparation of Subregional technical norms for the Program products.

Article 32. — Member Countries shall not apply safeguard clauses of any type to the importation of products of the present Program, either originating in or proceeding from the other countries.

Article 34. — Member Countries that have included products of the Program in their lists of exceptions will declare that they are withdrawing them from such rolls by the date of approval of the present Decision. Those products referred to are indicated in Annex VI.

Article 35. — Member Countries that share an assignment are obligated to adopt the necessary methods by which their participation in the subregional market will be made equitable. When one of these Member Countries consider its expectations in said Market to be affected by the existence of practices that undermine normal competitive conditions, it must bring the problem before the Board, supplying the Board with the information at its disposal, to the end that this will place in motion the procedures provided for in Decision 45.

Article 36. — Those countries that share assignments with Bolivia or Ecuador will enter into agreements with them or will adopt other measures tending to assure equitable participation of their respective products in the subregional market, before December 31, 1991. Whichever of those interested countries may solicit the collaboration of the Board in the negotiation of such agreements.

In the agreements or measures adopted, countries shall take into account those distinctive factors that might affect the realization of the expectations from the subregional market on the part of Bolivia or Ecuador, such as plants that are too large, the fluctuation of supply and demand in the Subregional Market, and, in the case of Bolivia, the costs of transportation resulting from the geographical location of the factories.

Likewise, they must consider the interest of consumers, for whose benefit the settlements mentioned in this Article will be brought to the attention of the Petrochemical Committee.

If agreement shall not have been reached in the Committee, or if settlements referred to in this Article are not timely reached, and problems arise in Bolivia and Ecuador, these may be brought before the Board. The Board, with whatever urgency is required by the nature of the matter, may direct, in temporary fashion and while the perturbation lasts, that the country involved may apply duties not higher than those of the Common External Tariff to the importation of the product in question, when the product originates from the country whose exports are causing the difficulty, or may adopt other measures to similar effect.

The Board will inform the Committee about measures adopted or authorized during the period of sessions immediately following the date of the respective Resolution.

The Commission may revise the methods adopted or authorized, if any Member Country requests the same within 60 days following the date on which the Board adopts the Resolution.

Article 37. — Without prejudice to the annual evaluation of the rate of progress of integration stated in the Cartagena Agreement, the Board will effect in 1978, 1981, and 1983 an analysis of the fulfillment of the commitments established by the present Decision, such as the development of the subregional market, for the purpose of proposing to the Commission, if necessary, measures to be adopted to assure the accomplishment of the objectives of the Program.

Article 38. — The Board will annually effect an evaluation of the progress of the petrochemical program in the Subregion, which will be brought to the attention of the Petrochemical Committee.

Article 39. — A Petrochemical Committee shall be created consisting of representatives of the Member Countries. Its principal function will be to contribute to the development of the Program, to facilitate the accomplishment of its objectives, and to recommend to the Board or the Commission those actions that it considers adequate for the implementation of the Decision. The attributes and regulations for the functioning of the Committee are described in Annex VII.

Article 40. — In order to facilitate the fulfillment of the Program, Member Countries will strive to act, together and with others, in the following manner:

a) To plan together their new investments.

b) To adopt collective measures to assure financing of new plants.

c) To promote the implementation by two or more Member Countries of integrated complexes for the manufacture of products in the most efficient manner possible. To this end, interested Member Countries may request that the Commission, on approval of the Board, modify the location of the assignments given in the present Program.

d) To promote the institution of multinational enterprise under the regime established in Decision 46.

e) To promote the creation of the necessary mechanisms to search and negotiate jointly for the technologies available in the international market, such as the adoption of measures tending to utilize and encourage a technological infrastructure in the Subregion; and

f) To advance necessary studies for the creation of measures directed toward the complete commercialization of the products of this Program.

Article 41. — Notwithstanding the provisions of Articles 26 and 27, Member Countries may authorize the installation in their territories of plants for the manufacture of products listed in Annex II that have not been assigned to them in the present Decision, as long as they do not alter the objectives of the Petrochemical Program and provided that they comply with the following requisites:

a) That the installation of plants not cause prejudice to the other Member Countries, particularly those countries to which the product in question has been assigned;

b) That the totality of the production of these plants be destined for markets in countries not members of the Cartagena Agreement, except for those exceptions in Article 4;

c) That the prime materials utilized in said production be of subregional manufacture when sufficient production of these materials exists; and

d) That a contract or agreement be entered between the firm and the Member Country where the plant is to be installed, that will contain measures assuring

the fulfillment of the commitments enumerated previously, as well as the minimum norms stipulated in Annex VIII of this Decision.

Article 42. — The government of any Member Country where it is planned to install a plant having production destined exclusively for exportation to third countries, must send to the Board a copy of the contract or agreement referred to in the previous Article [41-d], together with related information on the measures it proposes to adopt for the accomplishment of the requisites established in said Article. The Board may immediately place the contract and the received information at the disposal of the rest of the Member Countries.

In every case, the government in question must undertake to assure that the respective plant will comply strictly with the aforementioned requisites.

Within a period of 90 continuous days following the date on which the contract and the corresponding information is received, the Board, on its own initiative or on petition from some Member Country, may formulate observations for the government of the Member Country where the plant is to be installed, and will present the case to the Commission, if, in the Board's judgment, the requisites in Article 41 of this Decision have been infringed.

Article 43. — The contracts or agreements referred to in Article 41 must be effective for a term not shorter than the periods stipulated in Article 28 of the present Decision.

Article 44. — The Board may authorize the sale in the territory of Member Countries of products manufactured in the plants mentioned in Article 41, for specified terms and quantities, when it is verified that there is no subregional supply for these products, or that such supply is insufficient. In such case the importing country will apply the duties of the Common External Tariff.

If the plant is located in the territory of the importing country, that country will apply to the product an internal tax equal to the duty of the Common External Tariff.

Nevertheless, the Board, on the recommendation of the Petrochemical Committee, may authorize the reduction or suspension of the aforementioned duties or taxes in a proportion that will not disturb the market participation for the country or countries assigned to the product in question.

Article 45. — When the country or Member Countries favored with an assignment locates a firm that will manufacture an assigned product, the authorization referred to in the previous Article will be granted following verification of the existence of an agreement or commercialization contract between the firm whose production is destined for third markets and the firm mentioned above.

Article 46. — In the case of denunciation of the Cartagena Agreement, the rights and obligations arising from the present Program will remain in effect until December 31, 1991.

ANNEX VII

PETROCHEMICAL COMMITTEE

Article 1. — The Petrochemical Committee referred to in Article 39 of the Decision will have as its principal functions to contribute to the development of the Program, to facilitate the accomplishment of its objectives, and to recommend to the Board and the Commission those actions that the Committee may consider adequate for the achievement of the present Decision.

Article 2. — The Petrochemical Committee will consist of one permanent representative from each of the governments of the Member Countries. Each representa-

tive will have an alternate who will replace him in event of absence or impediment and who will have like of duties, rights, and obligations.

Article 3. — The permanent representatives to the Committee of the Member Countries, or their respective alternates will be accredited before the Board by the organisms mentioned in Article 15, Clause *i*, of the Cartagena Agreement. The representatives will attend the meetings accompanied by those accessories that they deem convenient.

Article 4. — The committee will be constituted and installed within 60 days of the date on which the present Decision is adopted.

Article 5. — The representative of the Member Country who may be acting as President of the Commission in that respective year will act as President of the Committee.

Article 6. — The Petrochemical Committee will have a Permanent Secretary, which office will be filled by a functionary designated by the Board.

Article 7. — Besides its principal duties, the Petrochemical Committee will have the following specific functions:

a) To analyze the rate of progress of the Program in each of the Member Countries and to identify the measures allowing for the best development, in order to suggest the same to the pertinent organisms;

b) To recommend to the Board those modifications that the Committee considers necessary for the best application of the present Decision;

c) To entrust the Permanent Representatives with the task of cooperating with the pertinent national organizations in the task of accomplishing timely fulfillment of the commitments established in the Program;

d) To bring to the knowledge of the Board or the Commission those cases in which differences of interpretation or application of the present Decision exist;

e) To provide for the Member Countries and the Board information on the development and functioning of the Program, especially that information necessary to make the annual evaluation referred to in Article 38.

f) To collaborate with the Board in the preparation of the specific analyses and evaluations referred to in Article 37 of the present Decision;

g) To analyze the information necessary to make apportionments among the Member Countries in accordance with the stipulations in Article 29, and annually to identify the flow of supply and demand for the Program products in the Subregion, to the end that the Board with this information and all other compilations may propose measures tending toward the attainment of regular provisioning and access to said products for all Member Countries.

h) To collaborate with the Board in the preparation of subregional technical norms for the products of the Program. To this effect, the Committee will give special attention to standards related to the products already manufactured or others whose production is about to be initiated;

i) To solicit, in every case, on petition of a Member Country, the information that the Committee considers opportune regarding the agreements or measures referred to in Article 36 of the present Decision;

j) To analyze the conditions of commercialization and competition for the Program products and to formulate recommendations that the Committee deems pertinent to be presented to the Board or to the Commission;

k) To analyze particular situations that might arise in order to incorporate technical innovations in the manufacture of Program products, for the purpose of recommending to the Commission, on the proposal of the Board, such measures as might be necessary;

l) To procure the adoption by Member Countries of joint measures, among others the following:

i) Financing for the acquisition of equipment and services for plants designated to manufacture Program products;

ii) Institution of multinational enterprises under the regime established in Decision 46;

iii) Development of a consulting service and design and planning engineering services at the Subregional level;

iv) Adoption of measures to achieve the maximum incorporation of the goods and services of subregional origin in the execution of the industrial projects of the Program;

v) Creation of measures for location of, and joint negotiation for, the technologies available in the international market and for the adoption of methods tending to utilize and fortify the technological infrastructure of the Subregion;

vi) Establishment of norms and criteria for the subregion relating to eventual problems of environmental contamination resulting from the installation of petrochemical production plants under the Program.

vii) Creation of mechanisms directed toward developing the commercialization of the totality of the products of the program.

m) To execute an annual work program;

n) To engage in whatever other activities might be of common interest to the Member Countries in matters concerning the Program and which conform to the ends of the present Decision;

o) The Committee will execute and approve its own rules at its first meeting;

p) The Petrochemical Committee, in its first meeting will recommend those modifications that it considers necessary, of the guidelines that the Board will present to the Member Countries, in conformity with Article 7 of the present Decision.

Article 8. — The Committee will meet ordinarily three times a year, the first Monday in March and the last Monday of June and of October, and in extraordinary meetings convened by the Board or the President of the Committee, when requested by at least two representatives of the Member Countries.

Article 9. — All ordinary and extraordinary sessions of the Committee will be held in Board headquarters, but in special cases and when the Member Countries agree, they may be held elsewhere.

Article 10. — The Committee will be in session when there are at least two-thirds of the members present.

Article 11. — The Committee may form work groups to assist in the study of special subjects and will determine the composition and the modus operandi of such groups.

Article 12. — When the Committee considers it necessary, it may recommend to the Board that the collaboration of organisms of specialized entities be solicited in

order to analyze problems of common interest to the Member Countries in matters related to the Program.

Article 13.— The results of the deliberations of the Committee shall be crystallized in a FINAL ACT which must be remitted to the Commission through the Board. If there is no unanimity in some of the materials submitted for discussion, the Final Act will contain those opinions expressed in the course of the debate whose inclusion has been requested by representatives of the Member Countries.

ANNEX VIII

CLAUSES THAT CONTRACTS OR AGREEMENTS MENTIONED IN ARTICLE 41 MUST CONTAIN

The contracts or agreements referred to in Article 41 must contain, at the least, clauses on the following matters;

a) A commitment to export the totality of production toward markets outside the Subregion, except for the exceptions in Article 45.

b) The obligation to use inputs native to the Subregion, when there is sufficient production.

c) The obligation, for the involved firm, of granting, with reasonable terms and conditions, a preferential option to the national investors of the Member Countries assigned to a product or products, in order that national investors might participate in the capital in a proportion of up to 15 per cent of the firm's capital. If the country or countries who are beneficiaries of the assignment have not used the option referred to above, the firm may offer such investment participation to one or another of the Member Countries in the same manner indicated above. If after completing the aforementioned procedure, there are no investors in the subregion interested in participating in the capital of a firm, the project may be executed in conformity with common legislation.

d) The investors of Member Countries who do participate in the capital of the enterprise will have the right to designate a director.

e) The director representing the investors of a country will have the capacity to make decisions relating to exportations destined for the subregional market referred to in Article 44.

f) The obligation for the firm to maintain special books registered in conformity with the respective national legislations, which will permit verification that the activities of the firm are proceeding in compliance with the contract.

g) Pecuniary sanctions on the firm for noncompliance with its legal or contractual obligations.

The contracts or agreements mentioned in Article 41 will have an effective term not less than those enumerated in Article 28 of this Decision.