The Andean Pact's Foreign Investment Code Decision 220: An Agreement to Disagree

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1989 marks the twentieth anniversary of the Cartagena Agreement, an agreement which established the Andean Common Market (ANCOM or “the Andean Pact”). ANCOM was formed to promote stable and uniform economic development and accelerate the economic development of its members. In contrast to the Latin America Free Trade Association (LAFTA), whose objectives were generally limited to the elimination of trade barriers, ANCOM sought to cover all aspects of economic activity.

An integral part of ANCOM was a set of regulations which controlled foreign investment, commonly known as Decision 24 (“D24”). Adopted in 1970, D24 sought to establish a common set of regulations governing direct foreign investment and the transfer of technology. ANCOM intended that D24 encourage foreign investment by creating a favorable climate for stable investment. Nevertheless, many viewed D24 as an obstacle to foreign investment, and therefore, it engendered much opposition from its inception.

2. Its members are Bolivia, Colombia, Ecuador, Peru, and Venezuela. Chile was a founding member but withdrew in 1976. Venezuela, although involved in the initial discussions regarding the formation of the Andean Common Market (ANCOM), did not become a member until 1973.
6. L. MYTELKA, REGIONAL DEVELOPMENT IN A GLOBAL ECONOMY 64 (1979).
7. See Armstrong, Political Components and Practical Effects of the Andean Foreign
In May 1987, the five current members of the Andean Pact agreed to a new foreign investment code, Decision 220 ("D220"). The signing followed several years of independent implementation by the members of ANCOM of D24, which was commonly thought to have failed to achieve its purposes. D220 effectively waters down the fade-out provisions of the old code, discards D24's multilateral foundations for bilateralism, abandons the establishment of a customs union, and eliminates sectoral programs for industrial development. The replacement of D24 is the culmination of many years of dispute and debate over its programs. Decision 220 formally adopts a flexible agenda allowing each member country to implement, according to its needs, an individually tailored foreign investment scheme. The general impression which remains is that ANCOM's foreign investment code contains little binding substance. Rather, D220 legitimates the generalized transgressions of D24.

To analyze D220, one must read it against the background upon which the original foreign investment code was drafted: the Andean Pact's prior experiences with LAFTA; the Pact's desire to attain economic independence and industrial development; and the Pact's desire to establish different programs and policies in conjunction with investment regulations. To this end, this comment will review briefly the historical background and theories of economic and social development which led to the creation of ANCOM. It will then examine D24, its structure and reasons for its demise. Finally, this comment will discuss the significance of the new foreign investment code, D220, in light of the original objectives for implementing a foreign investment code.


9. See P. de Palacios, supra note 7, at 275. See generally L. Mytelka, supra note 6.

10. See Decision No. 96 of the Commission of ANCOM which established customs unions.

11. See D220, supra note 8, art. 2.
II. HISTORICAL BACKGROUND

The economic activity of the colonial Latin American economies focused on the production of commercial crops and the extraction of precious metals for export, primarily to Spain. These activities established a pattern of dependence—exportation of a few raw materials in order to fund the importation of foreign commodities. Through the 1930s, Latin American economies largely mirrored this pattern as they continued to export food and raw materials in exchange for manufactured goods. The declining profitability from the export of these primary products and the threat of external economic disturbances, such as war and depression, induced many Latin American countries to discover ways of reducing their dependence on the world economy. A prominent method attempted was import substitution protected by high tariffs, a "policy" from which several consequences flowed. Higher tariffs allowed for inefficient firms and industries, and disparate protection policies between sectors distorted the allocation of productive resources. Export industries were discriminated against causing a detrimental impact on employment.

Throughout the 1950s and 1960s, as Latin American countries continued their policies of import substitution, they experienced increased balance of payments problems as new areas of import substitution required more expensive imports of machinery and equipment which usually failed "to offset the decrease in required imports of the final product."

13. Id.
15. Id. at 30.
16. Import substitution establishes "industries which would satisfy demand previously met by imports (accepting as given the existing demand pattern), thereby improving balance of payments." Radway, The Next Decade in Latin America: Anticipating the Future From the Past, 13 CASE W. RES. J. INT'L L. 7 (1981). Simply stated, import substitution is the fulfillment of local needs through local production.
17. D. MORAWETZ, supra note 14, at 50.
18. Id. at 51.
19. Id.
20. Id.
21. Id. at 52.
22. Id. at 51. "[T]he higher level of technology and greater economic power result in higher prices for foreign imports while the prices of Latin American exports follow a long-
involved the intense recruitment of foreign capital to aid in the establishment of facilities for domestic manufacture of formerly imported products. This establishment of facilities, in turn, led to the growth in foreign participation throughout the economy.

Prior to the 1950s, foreign investment was concentrated in the areas of agriculture and extractive industries. The 1950s saw a shift from foreign investment in these industries to a significant participation in manufacturing concerns. Despite the increased domestic production, the development goals of many Latin American governments remained frustrated as foreign corporations' investment activities failed to conform to the economic goals of the host countries. The indebtedness problems which resulted from import substitution required ever increasing amounts of foreign exchange. In order to obtain the foreign exchange it was necessary to develop export markets.

The United Nations' Economic Commission for Latin America (ECLA) provided the theories for what many considered the solution—economic integration. ECLA identified industrialization and direct economic planning as the basic elements of development. Arguing that retention of technological process in the developed countries permitted a concentration of the gains of growth which in turn exacerbated the terms of trade, ECLA sought to combine import substitution with export development. Using economic integration, Latin American countries could increase foreign exchange income and reduce their dependence on outside directed foreign investment.

term downward trend. Capital is drained through repatriated profits, interest payments or loans, fees for royalties, insurance, and shipping.” CHILCOTE & EDELSTEIN, supra note 12, at 21.

24. Id. at 51.
25. For example, within the Andean group, the investments in extractive industries went from $1.06 million to $1.137 million from 1957 to 1967. Over the same period manufacturing investment rose to $396 million from $117 million. See M. Wionczek, EL GRUPO ANDINO Y LA INVERSION EXTRANJERA PRIVADA (JUNAC Document No. JUN/di 2, Oct. 1970).
26. The increased foreign corporate presence led to an increased net capital outflow of more than $1 billion a year in 1979. See CHILCOTE & EDELSTEIN, supra note 12, at 51.
27. L. MYTELKA, supra note 6, at 9.
29. Id. at 13-14.
30. Balassa, Toward a Theory of Economic Integration, in LATIN AMERICAN ECONOMIC INTEGRATION 21 (M. Wionczek ed. 1966). Economic integration can be defined as both a process and a state of affairs. As a process “it encompasses various measures abolishing discrimination between economic units belonging to different national states.” Id. at 24.
In February 1960, nine Latin American countries signed the Montevideo Treaty establishing the Latin American Free Trade Association (LAFTA) to pursue economic integration. Experts hoped that LAFTA would be the basis for continued and significant regional economic growth. Although LAFTA included a minimal structure for a regional economic integration program, the main emphasis was on a gradual trade liberalization program, to be accomplished through a common schedule of tariff reductions between the members with an effective reciprocity of benefits between members.

LAFTA members agreed to completely eliminate common tariffs within twelve years. Members hoped that this reduction and eventual removal of tariffs on products traded within the region, would lead to an expanded market enabling the members of LAFTA to benefit from economies of scale. Although the overall concept of LAFTA envisioned a free trade area, there was a significant lack of any foreign trade or investment regulations between LAFTA and non-members.

In 1961, the Punta del Este agreement created the Alliance of Progress. The Alliance, seeking to augment regional resources by economic integration, can be characterized in various forms such as: 1) a free trade area, 2) custom unions, 3) a common market, or 4) economic unions. In general it is seen as no tariff between a participating country with a common tariff against non-member countries.

As a state of affairs, economic integration is "represented by the absence of various forms of discrimination between national economies." Id. "Total economic integration presupposes the unification of economic, fiscal, and other policies and requires setting up of a supranational authority whose decisions are binding for the member states." Id. at 25.

30. The nine countries were: Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, and Uruguay.
31. See Montevideo Treaty, supra note 4.
32. Wionczek, A History of the Montevideo Treaty, in LATIN AMERICAN ECONOMIC INTEGRATION 67 (M. Wionczek ed. 1966). The free trade area was the primary method by which LAFTA sought to accomplish regional integration.
33. Montevideo Treaty, supra note 4. Chapter two of this work outlines the entire program for trade liberalization. The basic system envisions a series of tariff schedules to be negotiated between the members.
34. In short, the Treaty provided for: 1) trade liberalization through reduction of tariffs; 2) expansion and diversification of reciprocal trade; 3) most favored nation treatment between members; 4) escape provisions for dumping or other unfair practices; and 5) special provisions concerning agriculture. Id. art. 2.
36. Wionczek, supra note 33, at 72.
increasing foreign public and private investments,\(^4\) openly encouraged direct foreign private investment in Latin America.\(^4\) Theoretically, the Alliance was designed to complement LAFTA. A stated objective was "the broadening of markets through the liberalization of trade . . . within economic sectors provided for in the Montevideo Treaty."\(^4\) However, neither LAFTA nor the Alliance coordinated among members the distribution of direct foreign investments nor provided for a common external tariff.\(^4\) This failure insured that foreign investment funds moved toward Argentina, Brazil, and Mexico ("ABRAMEX"), three nations having the largest markets and most developed industrial sectors.\(^4\) Consequently, the lesser developed countries once again found themselves receiving few positive economic improvements. The dependency\(^4\) which had rested on western industrial countries was on ABRAMEX.

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40. See Armstrong, supra note 7.
41. Id.
42. Alliance for Progress, supra note 39, tit. III.
43. See Armstrong, supra note 7, at 1598.
44. Thornton, Since the Breakup: Developments and Divergences in ANCOM's and Chile's Foreign Investment Codes, 7 Hastings Int'l & Comp. L. Rev. 239, 242 (1983); see also Ereli, The Andean Common Market, 8 Hous. L. Rev. 487 (1971).
Abramex with an aggregate of 80 percent of the regional industrial production doubled their favorable net regional trade balance, between 1962 and 1966, and primarily in the industrial sector. The middle powers, with 17 percent of regional industrial production, doubled their regional trade deficit, and again mainly in the industrial sector while the least developed members, with 3 percent of regional industrial product, changed from regional creditors to debtors, due to increased industrial impact from Argentina, Brazil, and Mexico.
Ereli, supra, at 488-89.
45. Dependency is an economic theory of underdevelopment concerning the relationship between developing countries at the periphery, with the developed countries in the center. The theory advances the idea that the center exploits the periphery through increasingly disadvantageous terms of trade. The developing country will never be equal because prices for primary products decline while prices for manufactured products increase. See generally O'Brien, The Critique of Latin American Theory of Dependency, in Beyond the Sociology of Development 8 (I. Oxal, T. Barnett & D. Booth, eds. 1975).
In order to understand the reactions of Latin American countries to foreign private investments "underdevelopment must be understood in historical perspective, that is, as a result of the formation, expansion, and consolidation of the world capitalist system." L. Mytelka, supra note 6, at 17.
Thus, Latin American countries work from the position that:
there exists among the developed and the underdeveloped economies a difference, not only of the stage or the state of the production system, but also of the function or position within the international economic structure of production and distribution: some produce industrial goods; others, raw materials. This requires a definite structure of relations of domination to assure an international trade based on merchandise produced at unequal levels of technology and cost of labor force.
F. Cardoso & E. Fallettto, Dependency and Development in Latin America 17 (1979).
More fundamental regional problems exacerbated this dependency. These problems included: 1) virtually non-existent internal and intra-regional communication and transportation systems; 2) governmental inexperience with international cooperation processes and administrative responsibilities; 3) different levels of national economic development; and 4) foreign investors unconcerned with assisting development, who merely viewed expanded regional markets as a greater opportunity for sales and profits.

Dissatisfaction with LAFTA and the increasing disadvantageous economic situation led to a meeting between the six members in 1966. In May 1969, five of the six gathered in Cartagena, Colombia to sign the Agreement on Subregional Integration. The primary purposes of the Agreement is to "promote a balanced and harmonious development of the member states, to accelerate this development through economic integration, . . . to secure aggressive improvements of the living standards of the people of the sub-regions." These stated goals were to be achieved through "coordination of economic and social policies," "intensified subregional industrialization processes," "acceleration in the trade liberalization program," and "a common external tariff."

III. DECISION 24

A. Introduction

D24 was intended to be the teeth of the Cartagena Agreement. As a major tool of the Cartagena Agreement, D24 created

46. Note, The Role of the Andean Court in Consolidating Regional Integration Efforts, 10 GA. J. INT'L & COMPL. L. 351, 356 (1980). Historical development had linked the countries of Latin America with Europe and North America ensuring a well developed coastal area.
47. Id. at 356. The governments of Latin America developed in a state of regional isolation. Their political processes were vastly different making it difficult to set up infrastructures to monitor regulations and compliances.
48. Id.
49. Id. at 357.
50. The six members were Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela.
51. The five members were Bolivia, Colombia, Chile, Ecuador and Peru. It was not until February 13, 1973 that Venezuela formally became a member of ANCOM.
52. See Cartagena Agreement, supra note 1. The Agreement "was a direct outcome of the frustration felt by some members" over the form that regional integration had taken under LAFTA. Penaherrera, The Andean Pact: Problem and Perspective, in REGIONAL INTEGRATION: THE LATIN AMERICAN EXPERIENCE 171 (A. Gauhar ed. 1985).
53. Cartagena Agreement, supra note 1, note 1.
54. Id. at 3.
55. For an excellent and comprehensive review of the legal and institutional framework
common rules for foreign investments. "[F]oreign capital and technology can play an important part in subregional development...to the extent that it constitutes an effective contribution toward attaining the objectives of integration and reaching the goals indicated in national development plans." D24 aimed to: 1) exclude or diminish foreign investments within key sectors of ANCOM's economy; 2) reduce foreign participation to a minority position within local enterprises or companies; and 3) stimulate development of local technology and reduce reliance on foreign technology.

To be effective, each member needed to uniformly implement D24. The rationale behind uniform implementation was the establishment of certainty and stability to foreign investors through a common legal framework, and uniform application of D24's rules so that member countries would not compete to obtain foreign resources. Nevertheless, in recognition of each country's different economic positions, D24 permitted the individual members a margin of difference within which to implement the Code. Although D24 dictated the minimum, each member, however, could be more restrictive.

Thus, D24 had a dual purpose—to protect ANCOM members' economies and to encourage foreign investments within member countries. It was thought that the commonality of the legal regime, together with their combined market size would induce foreign investment. However, members would still control the types, quantity, and timing of investments made.

B. Structure

D24 adopted a two-prong restraint over foreign investment. There was an intricate system of controls to which the foreign investor had to adhere, as well as a fade-out provision through

of D24 as it relates to Andean law, see F. Garcia-Amador, The Andean Legal Order A New Community Law (1978).
56. D24, supra note 5, preamble.
59. Id. at 641.
60. Id.
61. Id. at 642.
62. Id. at 641.
63. Id. at 635.
which the foreign investor was to eventually relinquish control to mixed or national ownership.64

1. Controls

a) Registration

Within ANCOM, all foreign investments must be authorized, approved and registered by the Competent National Authority (CNA)65 of the recipient country.66 This requirement was designed to allow member countries to evaluate and prioritize foreign investments within their particular development strategies.67 Other prohibitions were placed on investment in activities adequately covered by existing enterprises, as well as on direct foreign investment for the purchase of stock, shares or ownership rights belonging to national investors.68 Member countries were also authorized to reserve sectors for national development69 or to prohibit foreign investment in specific enterprises.70

b) Classification

D24 classified foreign investment into three categories depending on the percentage of “foreignness” found within the business enterprise:71 national enterprises, mixed enterprises and foreign enterprises.72 A national enterprise was one in which a national investor owned more than eighty percent of the capital and had management control of the business enterprise.73 A mixed enterprise was one in which a national investor owned more than fifty-one percent but less than eighty percent of the enterprise’s capital

64. Id.
65. D24, supra note 5, art. 6. A Competent National Authority is the entity within each member country charged with monitoring foreign enterprises through registration and other procedures established by D24.
66. Id. art. 2.
67. Dañino, supra note 58, at 643.
68. Id.
69. D24, supra note 5.
70. For example, insurance, commercial banking, domestic transportation, advertising, radio and television broadcasting, newspapers and domestic marketing. Id. arts. 42 & 43.
71. Id. art. 1.
72. Id.
73. “National Investors” included aliens with more than one year of consecutive residence who renounced the right to repatriate invested capital and to transfer earnings. Other “national investors” were the State, national individuals, and national enterprises.
and management. D24 required that, in the judgment of the appropriate CNA, these percentages be based on "the technical, financial, administrative, and commercial management of the enterprise." Thus, national authorities analyzed the substance of the transactions, instead of the form, in order to avoid "minority control by contract arrangements with national majorities."

c) Remittance/Reinvestment

Once foreign investors complied with registration requirements each could remit abroad the net profit up to a maximum of twenty percent of their investments. At the time of D24's enactment, this provision was one of its most controversial. In practice, however, member countries have failed to use the provision as a restriction for regulating the yearly outflow of foreign currency and the provision has turned out not to be a profit limitation as originally feared. D24 also authorized invested capital to be remitted abroad when foreign investors either sold their shares to national investors or liquidated them. Additionally, foreign investors could reinvest up to five percent of their capital without special authorization. Any reinvestment above five percent was required to follow the authorization and registration procedures.

74. D24, supra note 5, art. 1.
75. Id.
76. Id. Foreign enterprise is an enterprise established in a member country in which less than 51% of the capital and/or less than 51% of the technical, financial or administrative control (as determined by the local CNA), is owned or under the control of investors from that member country.
78. D24, supra note 5, art. 37. This article was amended in 1976. The amendment increased the remittance amount from 14% to 20%. Cf. Common Regime of Treatment of Foreign Capital and of Trademarks, Patents, Licenses and Royalties, signed 1970, reprinted in Instruments of Economic Integration in Latin America and in the Caribbean 296 (1975).
79. Oliver, supra note 77.
80. Daño, supra note 58, at 654.
81. D24, supra note 5, arts. 7-11.
82. Id. art. 13. This limit was later increased to 7%.
83. Id.
d) Credit Regulations

Under D24, access to credit applied only to foreign enterprises and did not restrict investment classified as national or mixed enterprises.\(^{84}\) D24 split the regulations into internal borrowing and external borrowing. With regards to internal borrowing, access to the local credit market by a foreign enterprise was limited to short and medium term credit.\(^{85}\) The terms and conditions for such borrowing were limited by the internal laws of each member country.\(^{86}\) In contrast, all borrowing from abroad needed prior authorization from the respective CNAs and each loan agreement had to be registered with the respective CNA.\(^{87}\) The approval and registration requirements were intended to control future remittance authorizations because the repayment of foreign loans tends to have significant effects on the balance of payments problem affecting host countries.\(^{88}\) Additionally, these requirements would correct the abuse of disguising profit remittance as excessive interest on loan repayments.\(^{89}\)

In all foreign borrowing contracts, the interest rate was to be determined by the respective CNA.\(^{90}\) This interest rate was closely related to the prevailing conditions in the country in which the transaction was registered.\(^{91}\) In addition, member governments of ANCOM were prohibited from guaranteeing, in any fashion, external credit transactions of foreign enterprises where the state was not a participant.\(^{92}\)

e) Transfer of Technology

Under D24, all contracts for the importation of technology,

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84. Id. art. 17.
85. Id.
86. Id.
87. Id. art. 13.
88. Daftino, supra note 58, at 660.
89. Id. Foreign enterprises could either request authorization for specific credit or for a global line of credit. Any amounts used through the line of credit had to be registered upon their entry into the country. Where there was a foreign credit contract between a parent company and it affiliates, or between affiliates of the same company, the rate of interest was not to exceed the prime interest rate by more than three points. The prime interest rate was that in the financial market of the country of origin of the currency in which the transaction was registered. See also D24, supra note 5, art. 14.
90. D24, supra note 5, art. 16.
91. Id.
92. Id. art. 15.
patents or trademarks\textsuperscript{93} had to receive prior authorization by each member's CNA.\textsuperscript{94} The reason for requiring this authorization was to ensure that the member country obtain a real contribution from this technology.\textsuperscript{95} Furthermore, ANCOM members intended to avoid purchasing overpriced and obsolete technology.\textsuperscript{96} The Subregional Office of Industrial Property, charged with implementing the above objectives, was created to act as the coordinating office between the CNAs.\textsuperscript{97} D24 contained a number of guidelines which were to be included in these contracts.\textsuperscript{98}

In the decision to authorize trademarks and patents, those patents and trademarks providing local or subregional technology were required to be granted preference.\textsuperscript{99} Once a contract was approved or authorized, royalties could be remitted by foreign enterprises,\textsuperscript{100} except when the technological contribution was made by a parent or affiliate.\textsuperscript{101}

f) Dispute Resolution

As an indication of ANCOM's concern regarding foreign investors and their bargaining strengths, D24 contained a very restrictive dispute resolution clause.\textsuperscript{102} Often incorrectly termed a "Calvo" clause,\textsuperscript{103} the dispute resolution clause restricted removal

\textsuperscript{93} Contracts for the utilization of foreign trademarks were limited by restrictive clauses such as those which prohibited sales in certain countries, obligated the use of raw materials, intermediate goods or equipment supplied by trademark owners, fixing sale or resale prices. See id. art. 45.

\textsuperscript{94} Id. art. 18.

\textsuperscript{95} Daño, supra note 58, at 663.

\textsuperscript{96} Id.

\textsuperscript{97} D24, supra note 5, art. 54.

\textsuperscript{98} Each contract was to contain identification of the terms of the transfer of technology, the value of each element within a technology transfer and the time period of the contract. Prohibited from these contracts were a number of clauses, including clauses obligating purchase of goods and services from the technology provider; fixing the sale or resale prices of products manufactured from the technology; restricting the volume or structure of production; requiring payment of royalties on non-utilized patents; and calling for a resolution of conflicts in a jurisdiction other than that of the recipient country. See id. arts. 19, 20 & 55.

\textsuperscript{99} Id. art. 24.

\textsuperscript{100} Id. art. 21. This clause prohibited affiliates to pay royalties to its parent or another affiliate which provided intangible technological contribution.

\textsuperscript{101} Id.

\textsuperscript{102} Id. art. 51.

of a dispute from the jurisdiction of the recipient country, when the dispute involved investments or transfers of technology.\textsuperscript{104}

2. Divestment

D24 intended to limit the advantages of ANCOM's duty free programs to products of national and mixed enterprises and those foreign enterprises which had been transformed, or were in the process of transforming, into national or mixed enterprises.\textsuperscript{105} This process, commonly called fade-out, is the gradual conversion of foreign enterprises into national or mixed enterprises within a particular time period and at a specific transformation rate.

Under D24 there were two types of transformations. First, there was an optional fade-out to mixed or national enterprises for foreign investors desiring to take advantage of the Cartagena Agreement's duty free status.\textsuperscript{106} Second, there was a mandatory fade-out into national enterprise status for foreign enterprises continuing to engage in the financial or marketing sectors.\textsuperscript{107} D24 required the minimum percentage of local investment to be fifty-one percent at the conclusion of the divestment period, except for firms in the transportation, communication and domestic trade sectors, where local participation was not to be less than eighty percent.\textsuperscript{108} As a precondition to acquiring authorization by the local CNA, each new foreign enterprise was obliged to execute a divestment agreement.\textsuperscript{109} Finally, under Article 44, a member country retained the right to abrogate the prior restrictions of Articles 41 through 43 when "special circumstances exist."\textsuperscript{110}

\textsuperscript{104} D24, supra note 5, art. 51.
\textsuperscript{105} Id. art. 27.
\textsuperscript{106} See Cartagena Agreement, supra note 1. Chapter V of the agreement outlines the various programs the agreement was to establish in pursuit of its trade liberalization goals. The duty free status was to allow tariff free or tariff reduced trade among members. See id. ch. V.
\textsuperscript{107} D24, supra note 5, arts. 42 & 43; see also id. art. 30 (new enterprises established after July 1, 1971, a date later modified, were to participate in the mandatory fade-out).
\textsuperscript{108} Id. art. 43.
\textsuperscript{109} Id. art. 30.
C. The Collapse of Decision 24

Economic integration schemes require relative economic parity among participants. Three obstacles which generally impede the formation and development of integration systems among developing nations are: politicization, unequal distribution of benefits and costs, and incompatible economic goals and policies. In the present context, these obstacles exemplify D24's failure, which can be viewed as a microcosm of the problems faced by developing countries when attempting economic integration schemes.

At the time of its adoption in 1970, there existed a strong consensus among the members to pursue a cooperative integration plan using D24 as a cornerstone. The members enjoyed similar economic structures and policies even though their individual levels of development varied considerably. However, it soon became obvious that the members had failed to uniformly implement D24 in their internal legislation. This lack of compliance with the strictures of D24 would ensure the erosion of the scheme's foundation. ANCOM members were pursuing individual development goals to the detriment of the integration scheme, reinforcing the principle, that "nations tend to identify with and pursue individual and national interests more forcefully than international cooperation."

L. 656, 662 (1977). This escape clause provided flexibility where local technological and managerial skills proved ineffective when operating within a restrictive sector of the economy. Additionally, member countries were allowed to reserve certain sectors for their national enterprises. These sectors consisted primarily of the basic-products sectors, which included enterprises dedicated to domestic transportation, media, communications, financial activities, public utilities, exploration and exploitation of minerals or forests. Foreign investments in these sectors were exempted from requirements of fade-out during the first ten years of the Code.

111. See generally P. de Palacios, supra note 7; Middlebrook, Regional Organizations and Andean Economic Integration, 17 J. COMMON Mkt. STUD. 62 (1978); Vargas-Hidalgo, An Evaluation of the Andean Pact, 10 LAW. AM. 401 (1978).

112. See Pike, supra note 110, at 1600 for a history of regional developments leading to adoption of D24.

113. INTER-AM. DEV. BANK, SOCIO-ECONOMIC PROGRESS IN LATIN AMERICA ANNUAL REPORT (1971). Listed below, as a very general indicator for the level of development, are the 1970 per capita gross domestic product figures for each member. Bolivia-$200, Chile-$510, Colombia-$300, Ecuador-$285, Peru-$434, and Venezuela-$980.

114. Pike, supra note 110, at 1609-18; see also Oliver, supra note 77, at 765-66.

1. Structural Weaknesses

A major weakness of D24, which frustrated its uniform implementation, was the failure to define many of the important terms.116 D24 used terms such as direct foreign investment, new investment, reinvestment, foreign and national investors, and national, mixed and foreign enterprises without any consistent legal definition.

A key term, empresas, has been translated as “enterprises.” A loose legal term, it has been variously defined as corporation, partnership or branch.117 The clarity of term is important because partnerships or corporations are considered juridical persons, whereas a branch does not hold the same juridical status.118

The lack of a precise definition of these terms lead to inconsistent practices among members. For instance, direct foreign investment in Bolivia was considered to be the total investment made and registered, but in Colombia direct foreign investment was the registered imported capital, plus reinvestment, less losses.119

Profit remittance was another subject of disparate treatment by members. Under Article 37, foreign investors could transfer abroad twenty percent of their profits with authority from the CNA. However, questions arose over what was the basis upon which this twenty percent was calculated. Would the twenty percent figure be based upon gross or net profits? Would the base increase by any reinvestment in subsequent years? Would one be able to carry over from previous years in which less than twenty percent was remitted that amount plus the twenty percent for the year just completed? Moreover, Article 37 permitted profit remittances to exceed twenty percent when there were special circumstances.120 The definition of special circumstances was left to the individual members to define.121

Even the fade-out provisions of D24, thought to be clear-cut and straightforward, left open the terms and conditions of trans-

117. Id. at 7.
118. Id. at 3. Partnership and corporations are considered to be juridical persons under civil law rules, whereas branches usually lack a separate juridical personality from their headquarters.
119. Id. at 8.
120. D24, supra note 5, art. 37; see also Rose, supra note 116, at 10.
121. See D24, supra note 5, art. 37.
formation contracts; where the local financing would originate to purchase the shares and rights of the foreign enterprises; and which of enterprises would have to transform. Furthermore, companies which exported eighty percent of their products or were active in the tourism industry, or companies engaged in the extraction of mineral resources, could avoid divestment entirely.

The different systems of registration used by ANCOM members stifled D24's effectiveness. Without any conformity among its members, it was impossible to determine which foreign corporations could remit profits, how much they could remit, and how much foreign investment existed within ANCOM.

Finally, D24 lacked the ability to sanction its members for violations of its provisions or to force recalcitrant members to accept its authority. Without the means by which members could judicially arrive at a consistent interpretation of the terms or clauses, D24 only exacerbated preexisting disharmony among members.

2. Chile's Withdrawal

Chile underwent significant political upheaval in September 1973, when General Augusto Pinochet replaced the socialist Al-

122. For concrete examples involving the diversified implementation of this highly controversial section of D24, see Rose, supra note 116, at 13-14.
123. D24, supra note 5, art. 34.
124. Id. art. 40.
125. Id.
126. Dañino, supra note 58, at 643-44. The example given by Dañino concerns a royalty payment. The transfer of a technology contract had been approved and authorized by one CNA however the CNA regulating foreign exchange denied the authorization to purchase foreign currency to pay for the technology.
127. Id. at 651-54.
128. Horton, Peru and ANCOM: A Study in the Disintegration of a Common Market, 17 Tex. Int'l L.J. 39, 50 (1982). The Cartagena Agreement recognized a general system of dispute resolution between its members, though it did not provide for a community wide judicial organ to arbitrate legislation and disputes. The first serious challenge to ANCOM law came from the Supreme Court of Justice of Colombia when it invalidated the Colombian President's promulgation of D24.

129. On May 29, 1979, the foreign ministers of the Andean Pact countries signed the Treaty Creating the Court of Justice of the Cartagena Agreement, 18 I.L.M. 1203 (1979). They hoped this institution would provide the interpretative authority for the Pact's integration efforts. The success of the court depends upon the willingness of the Pact's members to submit to a supranational authority, a willingness which has not been demonstrated in the past.
lende government with a capitalist model. Under Allende, economic development was thought possible without the need of foreign capital. The Allende government had followed D24 guidelines as it accelerated the realignment of its domestic economy through the nationalization of major sectors of the economy. However, under the Pinochet government, Chile reversed these nationalization policies and actively pursued foreign investment to divest the government of its nationalized industries.

On July 13, 1974, the Pinochet government implemented its own foreign investment code, Decree Law 600 ("DL600"). In contradiction to D24, DL600 allowed foreign capital virtual unrestricted entry into Chile. The other members of ANCOM strongly criticized DL600, believing that Chile was attempting to attract foreign investment at their expense. Chile countered that D24 conflicted with its development model and prevented the necessary foreign investment for that model. Chile further argued that because of its special national interests, it could ignore certain ANCOM measures. Chile’s partners in ANCOM looked to reach a compromise in order to keep Chile as a member. In October and November 1976, the Commission adopted several amendments aimed at reducing the scope of the dispute. Despite this flexibility on the part of ANCOM, Chile pulled out, citing in particular its opposition to the fade-out provision.

Initially, ANCOM and D24 appeared to emerge from the Chilian crisis with some semblance of order and uniformity. Never-
theless, the pursuit of individual economic goals, disparate economic systems, and strongly nationalistic governments continued to disrupt the uniform implementation of D24.

3. Peru and Recent Troubles

In 1980, a conservative Peruvian government was installed in Quito. As with the Pinochet government in Chile, this new Peruvian regime began the reversal of the nationalization process begun by earlier governments. The government reduced the maximum external tariffs from 120 percent to sixty percent, de-emphasized ANCOM's sectoral programs, and implemented an export incentive program (CERTEX). These initial changes were in distinct conflict with the goals of D24.

Additionally, Peru passed a series of resolutions which undermined several important provisions of D24. One resolution effectively eliminated the twenty percent limitation on profit remittances. The new resolution permitted remittances in excess of twenty percent to those foreign investments which developed backward regions of the country, created new employment opportunities, diversified exports, or produced goods necessary to Peru's economy. A second resolution, in contradiction to Article 24 of D24, eliminated the requirements regarding foreign investors' sales of shares to local investors.

ANCOM's other members responded to Peru's relaxation of D24 with the unilateral liberalization of their own foreign investment laws. This retaliatory action taken by member countries crippled major programs of D24. As a consequence, the junta offered proposals for change at the end of the summer of 1981. In 1982, the junta also presented an evaluation of the progress of their strategy of developmental nationalism and reduced dependency.

141. Horton, supra note 128, at 56.
142. Id. at 55-56.
143. Id. at 56-57.
144. O'Leary, supra note 128, at 115.
145. Id.
146. Id.
147. Id. at 116.
148. Id.
149. The perception among the members was that there was less foreign investment available, thereby increasing the internal competition to capture this scarce resource.
150. Horton, supra note 128, at 57.
D24.\textsuperscript{181}

As a result of the dissention among members, the Andean Pact Commission met for the first time in over a year at the beginning of 1983 to decide the Commission's future and resolve the major problems brought about by the unilateral protectionism of member countries.\textsuperscript{182} This was followed by a reunion of five Andean Presidents on July 24, 1983. Despite the importance of this meeting, they were unable to resolve the problems created by the protectionist measures taken by various members.\textsuperscript{183} Again in May 1984, the junta proposed further modifications to D24.\textsuperscript{184} Throughout 1985, the Andean group continued to struggle with the revision of the foreign investment rules. In December 1986, the five Presidents of the Andean Pact agreed to meet in early 1987 to try to salvage D24.\textsuperscript{185} Thereafter, in January 1987, the working group of the Commission achieved a final modification of D24. The Commission approved the textual modifications and all of the propositions of the work group. The major sources of contention, namely, implementation, fade-out, and divestment, appeared to have been resolved. On May 18, 1987, the Presidents met once again and approved the new foreign investment code, Decision 220.\textsuperscript{186}

IV. DECISION 220

A. Introduction

D220 is a reversal of the binding norms found under D24. Though D220 contains many of the tenets of D24, they are not mandated and each member is free to apply the regulations as it

\textsuperscript{181} Id. at 58.
\textsuperscript{183} Little New from the Caracas Summit, LAT. AM. REGIONAL REP.: ANDEAN GROUP, July 29, 1983, at 3.
\textsuperscript{184} The junta identified two causes for the difficulties of the Andean Pact. The first reason was that the subregional GDP grew only 2% in 1981 and did not grow at all in 1982 after growing at the rate of 6.8% annually during 1970-1979. The subregion exports declined by 16% in 1982 after growing at 18% in 1970. The second reason was that political changes in Ecuador, Bolivia, and Peru have had distinct repercussions on economic policies. Andean Pact Redefines its Aims, LAT. AM. REGIONAL REP.: ANDEAN GROUP, Oct. 5, 1984, at 4-5.
\textsuperscript{185} The main criticism of D24 had been that it did not respond to the regions needs. It did not encourage integration, nor did it lead to more foreign investments. Each member had "broken the rules" of D24. Region's Presidents Will Attempt to Salvage the Andean Pact, LAT. AM. REGIONAL REP.: ANDEAN GROUP, Dec. 11, 1986, at 1.
\textsuperscript{186} D220, supra note 8.
chooses. In those instances where common regulatory guidelines were retained, most were eased to provide greater flexibility to each member. The major changes include the following: 1) divestment is no longer obligatory, foreign investors have access to all sectors except those closed by individual countries; 2) the authorization requirement by the CNAs has been reduced to little more than registration; 3) there are no longer foreign loan ceilings; 4) local loans are no longer restricted; 5) the remittance of profits nominally retains the twenty percent ceiling but it is easily renegotiated, and; 6) the “Calvo Clause” has been effectively removed.

B. Structure

1. Controls

a) Registration

D220 retains the requirement that all foreign investment must be registered by the CNA of the recipient country. Nominally, the purpose remains the evaluation and prioritizing of foreign investments. However, D220 removed restrictions which prohibited investments in specific enterprises as well as those which prevented foreign investors from purchasing stock, etc. from national investors. An examination of the CNA’s duties under D220 reveals them to be essentially bookkeeping type functions. Authority is given to regulate remittances, license contracts and investment in existing companies. This “authority” is then severely proscribed by subsequent language or articles. The inevitable conclusion is that the CNA simply performs housekeeping functions.

b) Classification

D220 retains the classification definitions found in D24. No significant changes were made.

158. Id.
159. Id. at 172-73.
160. D220, supra note 8, art. 5.
161. Id. art. 4.
162. Id. art. 6.
163. Id. art. 1 & 6.
164. Id. art. 1.
c) Remittance/Reinvestment

The nominal figure for the repatriation of net profits remains at twenty percent of the investment. However, each member country may authorize higher percentages. Repatriable capital is strictly defined as follows: the initial direct foreign investment plus any further increments and reinvestment, registered and made, less any net loss. Also included in D220 is an exchange rate clause permitting remittances to be converted only at the time that they are made. Foreign, and now subregional investors, can continue to repatriate the amounts received from selling their shares from capital reduction or from liquidation.

Reinvestment, formerly restricted to seven percent of the investment, has been augmented to allow each member country to determine which profits and how much of those profits will be permitted as reinvestment. Articles 2 through 6 remove the authorization restrictions of D24, once again permitting direct foreign investments in the shares, rights and participations of national and/or subregional investments:

d) Credit Regulations

As prescribed under D24, D220 also requires foreign credit contracts to be registered with the CNA of the recipient country. However, many of the credit restrictions imposed by D24 have been removed. The local credit restrictions have been lifted completely. Each country determines what, if any, limits it will place upon a foreign investor's access to local credit. Former restrictions in D24 placing an interest rate ceiling on credit contracts paid abroad also have been removed. Furthermore, the "restriction" on governments of member countries endorsing or guarantee-

165. Id. art. 15.
166. Id. The CNA can also authorize the investment of excess profits after distribution. This investment will be considered direct foreign investment.
167. Id. art. 8.
168. Id. art. 9.
169. Id. art. 7.
170. Id. art. 10.
171. Id. art. 11.
172. Id. art. 14.
173. Id. art. 13. Under D24 the CNAs were required to follow a 3% ceiling on interest rates for credit contracts between parents and affiliates. Now, however, this rate is open for negotiation.
ing external credit transactions has been retained.  

\[1.\] Transfer of Technology

With one major exception, most requirements of D24 on the importation of technology, trademarks and patents continue to apply.  
\[1.\] An exception arises where an intangible technological contribution has been furnished by a parent company or affiliate.  
\[1.\] Under these circumstances, payment of royalties may now be authorized.

\[2.\] Dispute Resolution

Significantly, D220 removed the "Calvo Clause" restriction of D24. Article 34 states "for the settlement of disputes or conflicts arising from direct foreign investments or from the transfer of foreign technology, member countries shall apply the provisions established in their local legislation."  
\[1.\] This is an important concession. Formerly, it was not possible to remove a dispute from the jurisdiction of the host country.  
\[1.\] Now, however, if domestic law permits, the location and the law of dispute resolution can be negotiated.

2. Divestment

Chapter II of D220 explains the new fade-out provisions. For Colombia, Peru, and Venezuela the transformation is to take place across thirty years. For Bolivia and Ecuador, D220 allows thirty-seven years for the transformation process.  
\[1.\] The provisions for fade-out are completely voluntary. Foreign companies may enter into a fade-out agreement at any time.  
\[1.\] Those currently under a transformation agreement may request its termination or modification to the current structure.  
\[1.\] The fade-out contracts can be

\[1.\]  
\[1.\] \[174.\] Id. arts. 11 & 12.  
\[1.\] \[175.\] Id. arts. 18-24.  
\[1.\] \[176.\] Id. art. 22.  
\[1.\] \[177.\] Id. art. 21.  
\[1.\] \[178.\] See id. art. 34.  
\[1.\] \[179.\] Cf. D24, supra note 5, art. 51.  
\[1.\] \[180.\] D220, supra note 8, art. 25.  
\[1.\] \[181.\] Id. art. 26.  
\[1.\] \[182.\] Id.
modified, ended, or restarted at any time. These changes effectively remove any requirement to fade-out foreign ownership.

3. Miscellaneous

Direct foreign investments will not be authorized in other member countries for products exclusively assigned to Bolivia or Ecuador. ANCOM members have promised to commit themselves to coordinating their actions in international organizations, exchanging information on foreign investments in their territories, keeping each other informed as to their application of the code, and not granting foreign investors more favorable treatment than that granted to national investors.

The provisions spelling out the powers of the Commission and the Junta remain virtually unchanged with one exception. The exception, under Article 55 of D24, dictated that the Commission was to establish a subregional system for the development, promotion, production, and adaptation of technology. Removing the content of Article 55 of D24 from D220 further indicates that ANCOM is moving away from a multilateral and centralized application of investment restrictions to a more individual and flexible approach.

Chapter V of D220 incorporates a number of temporary provisions from D24. Direct investments from the Andean Development Corporation will be considered as national investments. The investments from public international financial institutions will be considered neutral, and these entities are exempt from the obligation to sell their shares. In all other respects, these international financial institutions are subject to D220. Other public international financial entities can also have their investments classified

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183. Id. arts. 26-29.
184. Id. art. 31. D220 retains some of the protective elements D24 afforded to Bolivia and Ecuador.
185. Id. arts. 32 & 33.
186. Id. art. 55.
187. Id. art. 22. Articles 22 under both D220 and D24 are identical.
188. Id. art. 38. These investments still need to comply with D220’s authorization and registration procedures, minimal as they may be.
189. These institutions include: Andean Development Corporation (CAF), Interamerican Development Bank (IDB), International Financial Corporation (IFC), German Association for Economic Cooperation (DEG), Denmark’s Industrialization Fund for Developing Countries (IFU). See D220, supra note 8, annex.
190. D220, supra note 8, arts. 41 & 43.
C. Decision 220 as Problem Solver

Determined that foreign investment would play a complementary role in the development requirements of its members, ANCOM, while writing the initial foreign investment code, sought to harmonize the interests of the foreign investor with their own development needs. D24 was designed to directly affect the behavior and operation of national and foreign investors within ANCOM. The code intended a planned reduction of foreign investment, a strengthening of the bargaining position of national firms vis-à-vis foreign firms and the strengthening of the bargaining position of the member countries vis-à-vis other countries, suppliers of capital and technology, and international organizations.

Initially, a consensus existed within ANCOM regarding the convenience of a simple set of regulations. There would be no incentive for struggles or conflicts between members, which would have the effect of reducing the members’ power of negotiation and the comparative advantage of their positions. However, the transformation of the relationship between foreign investors and the national economies occurred and was enforced in an atmosphere of hostility and indifference.

From the beginning, two major sources of contention, the fade-out provisions and the percentage caps on profit remittances, prevented consistent application of the foreign investment code. The arguments against these programs were based upon the premise that these restrictions would reduce or dry-up foreign investment within the Andean Pact. Under D24, the fade-out provisions were relatively strict and concerned almost all foreign investments. D220 removes the concerns members may have had that foreign investors will find divestment particularly troublesome. It now provides only generalized guidelines on divestment.

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191. Id. arts. 42-44. Other public international financial entities can request through an application, accompanied by their incorporation papers and investment policies, neutral investment status. The Commission can approve this request, following a report by the Board with a two-thirds positive vote and no negative votes.
192. P. DE PALACIOS, supra note 7, at 182-83.
193. See D24, supra note 5, Declarations.
194. P. DE PALACIOS, supra note 7, at 183.
195. Id. at 184.
196. See D24, supra note 5.
The transformation time frame has been doubled,197 and now concerns only companies desiring access to the trade scheme within the Andean market. Furthermore, the transformation agreements involve primarily the foreign investor and respective CNA. Because these agreements no longer need to meet the centralized requirements of D24, considerable flexibility is allowed. To make matters even easier, these contracts can be renegotiated at any time.198 Members are free to interpret the divestment rules according to their needs. Foreign investors should not have any problems with a thirty or thirty-seven year fade-out since it generally covers the economic life of most investments.

Under D24, profit remittance was originally capped at fourteen percent and was mandatory for all members.199 Following the disputes with Chile, this cap was raised to twenty percent. Each member country was also authorized to increase these percentages under certain circumstances.200 The new provision in D220, Article 15, retains the twenty percent limit; however, the provision allows member countries to be as restrictive or as liberal as they desire. Foreign managers have viewed the relaxed treatment of these remittances as a welcome change, although it has been noted that such remittances still remain subject to balance of payments constraints.201 Nevertheless, under D220, individual members may treat to their own unique economic problems without the former uniform restraints D24 placed on the members. To further ease the hesitancy that foreign investors had over D24, D220 has liberalized intercorporate payments and lifted the seven percent ceiling on profit reinvestment.202 The foreign investment restrictions in certain sectors have also been eased.203

D220, by allowing members to operate as freely as they desire, will negate the criticism that D24's fade-out and remittance restrictions were too restrictive. In one sense, D220 solved a problem members had with the original investment code. On the other hand, this resolution does not answer the broader questions of what role the foreign investment code is to play in ANCOM and

197. See D220, supra note 8, art. 25.
198. Id. art. 26.
199. See Dañino, supra note 58, at 654.
200. D24, supra note 5, art. 27.
202. Id.
203. Id. at 217.
whether D220 works to effectuate that role.

D24’s problems left the impression not only that it lacked a uniform implementation by its members, but that its very premises were not accepted by the same.\textsuperscript{204} Despite its initial acceptance as a necessary tool, at no time during D24’s history has there been consistent and uniform application or interpretation of its provisions.\textsuperscript{205} By itself, D24 had little impact in altering the structure of foreign ownership in Andean economies.\textsuperscript{206} It did not have the expected negative impact on direct foreign investment in the manufacturing sector. On the contrary, United States direct investment in the region rose between 1970 to 1976.\textsuperscript{207}

The leeway which D220 now leaves to ANCOM’s members is in reality a formalization of the members’ past transgressions against D24. A desire for uniformity is not apparent under the changes made in the investment code by D220. The new code may have cured the former code’s structural exceptions and perhaps tightened some of the definitions, but D220 has not resolved the inherent ambiguities which have existed since the foreign investment code’s inception.

As a problem solving device, it would appear that D220 will resolve the clashes which periodically arose between members over the implementation of D24. The new degree of latitude each member has to interpret and to implement it, leaves little opportunity for conflicting practices. It is an agreement designed to allow its membership to disagree.

However, when D220 is read in conjunction with the original goals of the foreign investment code and the experiences of ANCOM’s members with LAFTA, three ironies are apparent. D220 will not prevent ANCOM’s members from increased intra-member competition in the pursuit of direct foreign investment. As with the previous experience under D24, it is again likely that investment capital will tend to flow towards those countries having a more developed market structure. At present, with some exception allowed for mineral extraction, Venezuela and Columbia are such developed countries.

Secondly, in contrast with stated goals, neither the members

\textsuperscript{204} L. MYTELKA, supra note 6, at 111.
\textsuperscript{205} Id.; see also P. DE PALACIOS, supra note 7, at 186.
\textsuperscript{206} L. MYTELKA, supra note 6, at 86.
\textsuperscript{207} Id. at 100.
nor their national enterprises will benefit from an increase in bargaining power vis-à-vis foreign entities. The "united front" posture has been abandoned. D220 formally departs from the principle of capital and foreign investment regulation.

Third, the common foreign investment regulation policy was originally viewed as a cornerstone of economic integration.\textsuperscript{208} If in place and operating in a consistent fashion, it was thought that the members would direct economic growth and investment into target areas.\textsuperscript{209} In practice, however, the investment code has been ineffective. D220 will not correct any of these drawbacks. Rather, the adoption of D220 removes any vestige of united action; it is an abandonment of the principle of economic integration.\textsuperscript{210}

V. Conclusion

It has been suggested that a legal framework that deals with foreign investment is required to protect the member countries and foster an influx of foreign resources for a successful Andean common market. The implementation of D24 lacked the clarity and uniformity necessary to provide a consistent interpretation of the investment code. In fact, the members of ANCOM pursued individual programs designed to benefit their respective countries with little regard to their impact on the common market.

Decision 220 recognizes the current status quo, the individual members' self-regulation of foreign investment. The overall structure of D220 simply provides a set of guidelines. The decision lacks the means to enforce consistent interpretation or application of its provisions. Enacted as part of the Quito Protocol, which itself moves away from the common integration theories of the Cartagena Agreement, D220 is an agreement which sanctifies competition between ANCOM's members.

It is apparent that the premises upon which ANCOM was established are being challenged. An alternative concept of a common market views the control of goods, rather than the control of foreign financial resources, as the more relevant basis for economic integration.

\textsuperscript{208} P. de Palacios, \textit{supra} note 7, at 182.
\textsuperscript{209} Id.
\textsuperscript{210} Id. at 13. Theories of economic integration diverge from the more traditional views of international trade. The orthodox view holds that each country has its own comparative advantage in labor and/or resources and that trade will lead to specialization which, in turn, leads to a relative leveling.
integration. However, ANCOM is not even seriously pursuing this idea. The Quito Protocol removed specific target dates on the implementation of common tariffs between members and as against non-members. It extended safeguards so that members can protect their own domestic markets from the harmful exports of their partners and has modified the sectoral industrial programs to allow for more individual and bilateral developments.

Decision 220 will be the initial vehicle by which ANCOM can move away from the more formal strictures of economic integration. The abandonment of a common regime on foreign investments again exposes each member to competition from the larger and more developed nations of Latin America. D220 has returned the Andean Pact members to their market positions of 1970. The crucial question, however, remains; whether the members can maintain the necessary momentum to create a common market.

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