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AN EVALUATION OF THE ANDEAN PACT

RAFAEL VARGAS-HIDALGO*

The Andean Pact crisis reflects the problems encountered by those developing countries which implement the economic integration system. As the countries of Bolivia, Columbia, Ecuador, Peru and Venezuela continue to be members of the Andean Pact,¹ also known as the Cartagena Agreement, it is important to consider some proposals for the revitalization of the economic integration system.

I

The main obstacles to the success of the Andean Pact and those generally affecting economic integration systems among developing countries are politicization, unequal distribution of benefits and costs, and incompatibility of economic policies. Each is defined in terms of its specific effect on the goals of the Andean Pact.

Politicization, as presented in the context here, is the process through which conflicting perceptions of the common interest within the integration system become more prominent. In this conflicting situation, the national interest appears more immediate, actual and urgent than the integration goal, which is perceived as distant, uncertain and less attractive from a domestic point of view. Since 1973, it is possible to observe an increasing degree of politicization, despite the Cartagena Agreement's process. According to Nye's classification,² this phenomenon was premature since it occurred before supportive attitudes were sufficiently crystallized and structured. The members began to pay more attention to their particular economic interests than to those of the Andean region as a whole. The process of politicization was most clearly demonstrated in Chile, but its effect was felt by the other members as well. The situation fostered distrust and diminished the Pact's integration capabilities.

A preeminent concern among the parties of the Andean Pact has been the maintenance of equality of the benefits and costs derived from the integration system, a concern most acutely felt in the 1974-76 period. A primary reason for the creation of the Cartagena Agreement was that the most powerful members of the Latin American Free Trade Association (LAFTA), Argentina, Brazil and Mexico, were obtaining a dispropor-

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1. Cartagena Agreement, May 26, 1969, 8 Int'l Leg. Mat. 910 (1969). For a Spanish text see *Compilación de Documentos Relacionados con el Acuerdo de Cartagena* 67 (1975) [hereinafter *Compilación*].

2 J. Nye, *Peace In Parts* 89 (1971).

tionally major benefit from this system.³ In addition, the Andean countries had prior experience with other integration schemes, such as the Central American Common Market where in 1965, El Salvador and Guatemala had acquired seventy percent of the industrial exports of this system.⁴ In consideration of previous inter-American resolutions on this subject,⁵ the Andean Pact establishes as one of its main policies, a special treatment for the less developed countries in the region, Bolivia and Ecuador.⁶ The Convention states that to further the progressive elimination of the differences presently existing in the development of the area, Bolivia and Ecuador shall be permitted to achieve a more accelerated rate of economic development through effective and immediate participation in the advantages of the industrialization of the area and liberalization of trade.⁷ To implement this result, there are special provisions applicable to Bolivia and Ecuador regarding harmonization of economic policies and coordination of development plans, industrial policy, commercial policy, the Common External Tariff, financial cooperation, and technical assistance. However, while equity in the distribution of costs and benefits is more acute in the less developed countries, the other members of an integration system are concerned with this problem as well, as the equitable distribution of costs and benefits ultimately determines the voluntary and permanent participation of member States.⁸

The measurement of the distribution of costs and benefits involves differing perceptions among the member countries as to

the costs and benefits and as to the valuation to be given to their various components, the time-periods over which they are to be assessed and the valuation implications of these time-periods, ambiguities in the determination of disparities in development in the context of the distribution policies of regional economic integration schemes, the definition of an equitable distribution of costs and benefits, identification of distributable and non-distributable costs and benefits, the separation of the effects of regional economic policies and characteristics, the determination of the indirect effects of costs and benefits arising from regional economic integration and the valuation of the direct and indirect effects of

3. See G. Salgado, *Ecuador y la Integración Económica de América Latina* 177 (1970). This situation violated the purpose stated in the Preamble of the Montevideo Treaty (1960) which established LAFTA. This inequality is shown, for instance, in LAFTA's Complementation Agreements.

In fact, of the twenty Complementation Agreements already established, Brazil participates in 17 (85 percent), Argentina and Mexico in 14 (70 percent), Chile in 6 (30 percent), Peru and Colombia in 2 (10 percent), Bolivia in 1 (5 percent), and Paraguay in none. See Tironi, *Las Estrategias Nacionales de Desarrollo y la Integración de los Países Andinos*, 9 *Estudios Internacionales* 66 (1976) [hereinafter Tironi].

4. G. Salgado, *supra* note 3, at 14.

5. See, e.g., Declarations of the Presidents, April 14, 1967, of America, pt. II, Ch. I, § 1, 6 *Int'l Leg. Mat.* 714 (1967).

6. Cartagena Agreement, *supra* note 1, at 929. Also, the Convention is concerned with this problem throughout its provisions; See, e.g., art. 2, at 910.

7. *Id.*, art. 91 at 933.

8. See Current Problems of Economic Integration 1, U.N. Doc. TD/B/517 (1975).

regional infrastructure undertakings.⁹

The determination of the criteria involved is resolved by governments according to political rather than technical criteria. The result is that pure political judgments on such a delicate issue hinder the stability of the integration process. However, while assessing the distribution of costs and benefits, governments often consider issues of economic development and the success of the integration system as well. There is also a tendency to disregard the disparities existing prior to the establishment of the integration system, such as the degree of industrialization and managerial capacity, and those inequalities that increase after the country has joined the system.

The third major cause of the Cartagena Agreement's crisis was the incompatibility of the economic policies pursued by the signatories. In 1969, the convention was concluded when a consensus had been reached on the economic model to be used for the Andean development. The model called for a "mixed" economy, with reform in the traditional capitalist system and a greater role for the State in economic matters, but with the maintenance of a favorable climate for private enterprise participation. This economic approach was implemented by Frei's government in Chile and by Lleras Restrepo's in Colombia, advocates for the establishment of this integration system. This model was further supported by the fortunate conjunction in 1968-69 of plan-oriented, modernizing governments in Chile, Colombia, and Peru, with the revitalization of national planning by these governments.¹⁰ Thus, the mixed economy model, perceived by each government in a different way, was manifested in the Andean Pact's mechanisms. Eventually, many States changed this view as a result of their own shifts in economic policies and general political orientations, an inevitable development considering the highly unstable political situation in the Andean region.

The Cartagena Agreement emphasized the need to achieve a harmonization of national policies and coordination of plans as a first step towards its ultimate goal of joint planning. However, by 1974 the process of harmonization of national policies, which held much potential for higher forms of integration, prevented further progress. Shortly before the signature of the Pact, Peru and then Chile, in 1970, changed their mixed economy model for a planned one with socialist learnings. But the most serious problems with the incompatibility of policies occurred in September 1973 when Chile initiated its free-market model. Nonetheless, between 1969-73, these parties were able to pursue their integrative experience, and the Convention survived an average of two changes of government per country.¹¹

9. *Id.* at 11.

10. The Chilean National Planning Office, ODEPLAN, has been given great importance. It was created by Law 16,635 of July 14, 1967.

11. Actually the mathematic Figure is 2.5. To calculate this number, Venezuela has been discarded since this country adhered to the Convention in 1973. The changes of government per country are the following: Bolivia: Luis Adolfo Siles (1969), General Alfredo Ovando (1969-70), General Juan José Torres (1970-71), and General Hugo Banzer (1971-); Chile: Eduardo Frei (1964-70), Salvador Allende (1970-73) and General Augusto Pinochet (1973-); Colombia: Carlos Lleras Restrepo (1966-70), Misael Pastrana Borrero (1970-74); Ecuador: Jose María Velasco Ibarra (1968-75).

II

The problems of politicization, unequal distribution of costs and benefits, and the incompatibility of policies were clearly present in the measures taken in connection with the Foreign Investment Code, the Common External Tariff, the Program of Trade Liberalization, and the Industrial Program. The conflicts occurring with respect to these programs contributed to the Andean Crisis.

The more prominent clashes within the Andean Pact began in 1974 with a discussion of the foreign investment code, known as Decision 24.¹² This resolution was approved within the first months of the Cartagena Agreement's existence, with the hope that in this way foreign investments could be directed towards development in accordance with the government's will. In the past, severe regulations by individual States caused the flight of foreign capital to other countries.

Decision 24 was put into operation in some countries, such as Chile and Colombia, despite internal legal problems. In the beginning, the Andean governments showed great enthusiasm in the application of this Code, being one of the few examples of unanimous formal internal implementation of an Andean Decision. However, in practice, interpretation and application were not uniform, especially after 1973 when important political and economic

12. Decision No. 24 of the Commission of the Cartagena Agreement, third period of the Commission's Special Meetings, December 14, 1970, 1 Instruments of Economic Integration in Latin America and the Caribbean 296 [hereinafter Economic Integration]. For a Spanish text, see *Compilación* 105 (1975).

The Cartagena Agreement established in article 27, *supra* note 1, at 917, (also see art. 26 par., and *supra* note 1, at 917) that this resolution had to be taken before December 31, 1970. Decision 24 has been modified by Decision 37 (fourth period of the Commission's special meetings, June 1971), Decision 103 (twentieth period of the Commission's ordinary meetings, October, 1976) and Decision 109 (twenty-first period of the Commission's ordinary meetings, November, 1976).

Since June 30, 1971, that common regime for treatment of foreign capital has been in force among the parties (in this respect *See* 4 Grupo Andino 1-2, 1971). In connection with Decision 24, the Commission has approved Decisions 47 and 48, both of November 18, 1971. Decision 47 deals with regulations concerning state participation in mixed companies and Decision 48 with regulations applicable to investments made by the Andean Development Corporation and any of the parties. *See* text of Decision 47, 1 Instruments 343 and Decision 48, 1 Instruments 344.

In connection with the Andean Foreign Investment Code, see generally Armstrong, *Political Components and Practical Effects of the Andean Foreign Investment Code*, 27 *Stan. L. Rev.* 1597 (1975); Furnish, *Andean Common Market's Common Regime for Foreign Investments*, 5 *Vand. J. Transnat'l* 313 (1972); Guerrero, *El Regimen Comun de la Inversion Extranjera en el Grupo Andino*, 8 *Derecho de la Integración* 8 (1971); Matter, *Die Bestimmungen des Andepaktes über die Gemeinsame Behandlung des Ausländ kapitals*, 27 *Aussenwirtschaft* (St. Gallen) 56 (1972); Mirabito, *The Control of Technology Transfer*, 9 *Int'l Law* 215 (1975); Oliver, *The Andean Foreign Investment Code*, 66 *Am. J. Int'l Law* 763 (1972); Palacio, *El Acuerdo sobre Capitales Extranjeros en el Grupo Andino*, 1 *Rev. Cámara de Comercio de Bogotá* 33 (1971); Salgado, *El Grupo Andino y la Inversión Extranjera*, 23 *Comercio Exterior* 154 (1973); Schliesser, *Restrictions on Foreign Investment in the Andean Common Market*, 5 *Int'l Law* 586 (1971); Schliesser and Thoma, *Beschränkungen Für Aussenwirtschaftsdiens des Betriebs — Berater* 282 (1971); Wionczech, *U.S. Reaction to the Andean Group System for Treatment of Foreign Capital*, 17 *Comercio Exterior* 27 (1970).

changes began to take place within the region. These changes determined the end of the economic and political consensus that made possible in 1970 the issuance of Decision 24. Ecuador and Venezuela dramatically incremented their capital after the 1973 OPEC's fourfold oil price increase. Chile was in a prostrated economic situation, as was Peru, after two years of social and political unrest. At the end of 1973, Chile transformed its economic model into a free-market form. As a result, some countries had begun to wonder whether Decision 24 was too severe, and thus discouraged foreign investment.

The political changes in the region were reflected in the different governments of President Allende and General Pinochet. With respect to foreign investments, Allende's advisers believed in the possibility of achieving development without the need of foreign capital. The inauguration of Allende's administration was greeted with the appearance of a book that strongly defended this position.¹³ Practice soon proved this theory inadequate, and Allende reassured foreign investors that they would be treated under Decision 24 and that Chile required foreign investments. However, the level of foreign investments in Chile declined due to the nationalizations which took place under his regime, important international business opposition to that government, and the generally chaotic Chilean political and economic situation. On the other hand, Pinochet's government took the initial position that economic development would not be reached without the contribution of large amounts of foreign investment, and that such capital inflows should receive extensive guarantees from the State. However, implementation of such policy was limited by Decision 24. Hence, in 1974, Chile began to exercise pressure in order to reform this Code. Chile was able to maintain this pressure because its military regime enabled it to take such a stand without facing internal opposition.

Thus, on July 13, 1974, the Chilean military Junta promulgated Decree Law 600¹⁴ which regulated foreign investment. This Decree Law was strongly opposed by the rest of the Andean partners, and the Andean newspapers launched violent attacks against the Chilean government. The mutual feeling among the other Pact countries was that the new Chilean government was attempting illegally to attract foreign investors to the detriment of the other countries. In response to this volatile situation, the Commission—the political organ of the Andean system—declared in September of 1974¹⁵ that Chilean Decree Law 600 was incompatible with the letter and spirit of Decision 24. The Commission also called for a special session to discuss this matter further.¹⁶ This special meeting was proposed by the technical organ of the Andean system, known as the Board, to avoid the continuance of the division among the parties. The Commission also impliedly entrusted the Board with the conciliatory means with which to seek a

13. Caputo and Pizarro, *Desarrollismo y Capital Extranjero* (1970). See comment on this book by present Author, *I Estudios Jurídicos* 190 (1972).

14. See text in *Decretos Leyes Dictados por La Junta de Gobierno de la Republica de Chile* [hereinafter *Decretos*] (551-600) 154 (1974).

15. Fifteenth period of the Commission's ordinary meeting.

16. See 39 *Grupo Andino* 3 (1974); 41 *Grupo Andino* I annex (1974);

solution to the problem. Thus, the members of the Board visited Chile in October 1974. As a result of the Board's talks with the Chilean authorities, Chilean Decree Law 746¹⁷ was issued on November 9, 1974, by which Chile committed itself to carry out several legal reforms that would allow the complete application of Decision 24. Decree Law 746 expressly stated that Decision 24 was part of the Chilean legal system. However, at the same time, Chile began to press the Board to evaluate the practical application of Decision 24. Chile asserted that this Decision was not receiving uniform application due to differences in national legislation affecting foreign investment, especially in relation to the foreign exchange laws.¹⁸

In response to Chile's dissatisfaction, the Commission entrusted the Board with the task of studying which reforms were necessary.¹⁹ For the purpose of examining the internal national implementations of the Decision and to ascertain the regulation that this investment code would require, the Commission convened the Andean Pact's Consultative Committee in August 1975.²⁰ In April, 1976, the Commission decided to create a working group to study possible amendments to the foreign investment Decision.²¹ The establishment of this working group was considered to be a successful product of Chilean lobbying and it was noted that even Peru, who had been the Decision's strongest supporter, "softened its line."²² However, Venezuela commenced a campaign to avoid reforms of Decision 24.

As to the remittance abroad of foreign enterprises' profits,²³ Chile opposed the maximum limit of fourteen percent, found in Decision 24, and also opposed the twenty percent limit found in the Declaration of Boyoca of August 1976, and later in Decision 103. With regard to the regulation of foreign investment, Chile criticized the obligation to transform foreign investment into national or mixed enterprises,²⁴ and the prohibition of direct investment to acquire shares, stock or ownership rights of national investors, unless those direct foreign investments were performed to prevent the imminent bankruptcy of the national enterprise.²⁵ This last prohibition limited Chilean efforts to de-nationalize industry, illustrated by General Pinochet's program to reduce the number of State-controlled enterprises to twenty-three. At the time of Allende's downfall in 1973, there were 600 en-

17. See text in Decretos (701-750) 174 (1975).

18. 41 Grupo Andino 3, annex (1974).

19. *Id.* at 2-6, annex (1974).

20. 48 Grupo Andino 2 (1975). In the seventeenth period of the Commission's ordinary meetings, this Committee was established by articles 19, 20, 21 and 22 of the Cartagena Agreement. In accordance with article 19, the consultative committee is the organ through which the member countries shall maintain close ties with the Board.

21. Sixteenth period of the Commission's ordinary meetings.

22. 4 Latin Am. Econ. Rep. 93 (1976).

23. *Supra* note 1, art. 37, at 919.

24. Chapter II of Decision 24.

25. *Supra* note 1, art. 3 at 910.

terprises which had been nationalized since the 1930's.²⁶ By November 1976, the (self-governing) Chilean Promotion of Development Corporation (CORFO) controlled fifty-five of those 600 enterprises, and it was expected that by April 1977, the State would eliminate thirty-two others. In addition, 295 of the 600 enterprises were returned to their former owners under the argument that the nationalization had been illegal, and 250 were sold for about 335 million U.S. dollars.²⁷

As a result of Chile's pressures, the Commission in April 1976, adopted Decision 97²⁸ which authorized Chile to sell to foreign investors the shares, stocks or ownership rights of the enterprises totally or partially belonging to CORFO. And, on October 30, 1976, soon after Chile's withdrawal, the Commission approved Decision 103,²⁹ which essentially modified Decision 24.³⁰ A few other complementary reforms were introduced by Decision 109 in November 1976.³¹ The approval of Decision 103 had an impact on the

26. Indeed, in his second government (1932-1938), President Arturo Alessandri began a process of public capitalization with his policy of achieving the State's capital majority in the nitrate industry. From that time, Chilean governments, including conservative ones, have contributed to the enlargement of the State-owned firms. History shows that Allende only accelerated that process. The fact that there was increasing State participation in the most important industries does not conclusively prove a socialist trend among the Chilean governments. This policy was solely the result of the extreme scarcity of capital coupled with a social consensus on the need to establish certain big industries in order to accomplish economic development. Thus, only the State could be the financier.

27. Ercilla, October 27, 1976, pp. 21-22.

28. Sixteenth period of the Commission's special meeting, 54 Grupo Andino 1 annex (1976).

29. 59 Grupo Andino 8 annex (1976).

30. The effects were as follows: the profit remittance limit was raised from fourteen percent to twenty percent per year; the automatic reinvestment allowance increased from five percent a year to seven percent; the foreign investor now has access to local short and medium term credit (not more than three years); foreign investors may buy shares, by means of capital increase, in existing local companies provided the foreign shareholding does not exceed forty-nine percent; the one year residence required for industrial foreign investors to be considered national investors can be waived provided the investor still renounces the right to remit profits or repatriate capital; the Andean nationals investing in one country in the region will be considered local investors, but can remit profits and repatriate capital like foreign investors; the commission can agree with non-member Latin American countries to provide a better treatment for their nationals than for outer-region investors; the rules regarding the transformation from foreign to national or mixed enterprises have been accorded new period times in which to operate and this transformation can operate by capital increases from investors instead of only by sales of existing shares; and companies involved in tourism are exempted from the transformation into national or mixed company rules, on the same basis as previously applied to companies exporting eighty percent or more of their output outside the Andean region. In addition, the parties can now go beyond the limits imposed for profit remittance and automatic reinvestment allowance by means of two regulations incorporated into article 10: the first allows each country to choose its own remittance levels above twenty percent, and the second allows each country to permit reinvestment, or even reinvestment in other companies, of any excess profits (presumably those over and above the twenty percent remittance level plus the seven percent reinvestment allowance, though this is not actually specified. See 4 Latin Am. Econ. Rep. 180 (1976). Such investment or reinvestment is now to count as though it were new direct foreign investment. Despite the important modifications included in Decision 103, these would not have satisfied the Chilean government which sought even more liberal policies and protection for foreign investors.

31. 60 Grupo Andino 5 annex (1976).

future rule of Brazil in Bolivia, as non-member Latin American countries investing in the region are now benefited. For a long time, Brazil has been incrementing its economic importance in Bolivia, especially in the Santa Cruz region. Decision 103 also gives an advantage to Venezuela, since nationals investing in the region can remit profits and repatriate capital like foreign investors.

The Andean Pact's crisis was precipitated by some of the time periods stated in the Convention. In accordance with the Agreement, important measures had to be adopted by the December 31, 1975 deadline. Thus, by that time it was necessary to fulfill obligations pertaining to the Common External Tariff,³² the Program on Inter-Regional Trade Liberalization,³³ and the Sectorial Programs of Industrial Development.³⁴

Trade barriers have been traditionally considered in Latin America as an important instrument for the protection of industry. Thus, during the negotiations of the Cartagena Agreement, there was unanimous agreement among the Pact countries on the need for a Common External Tariff, and the debates focused only on the terms through which it should be achieved. The antecedent of this Latin American policy is very old. Tariff protectionist measures taken by the Chilean Reglament of Commerce date back to 1822.³⁵ These protectionist measures were accentuated and more broadly implemented after the 1930's due to the impact of ECLA's recommendations. The destruction of the international markets, caused by the Great Depression, obliged the Latin American countries to substitute imports for national products. The Second World War accentuated this process as the industrialized countries were producing primarily for their internal markets, with concentrated industrial efforts on the production of war materials. It is therefore no surprise that the signatories of the Andean Pact had little difficulty in establishing a tariff system.

Recently, however, the new Chilean government has drastically reduced tariff barriers. This change of policy reflects its expectation that due to international competition, the Chilean industry will have to decrease its prices, improve its quality and orient itself towards those productive sectors which the country requires. The Chilean government also argued that high tariffs were fueling inflation in the Andean countries.³⁶ In effect, the Chilean policy pursues a free distribution of resources to those productive sectors able to compete with foreign goods within the country. On the other hand, the rest of the Convention's parties considered that the productive sectors which internally present comparative advantages to foreign commodities consist primarily of activities such as agriculture and mining. These countries affirm that the industrial emphasis, which could bring, *inter alia*, a higher percentage of employment (the agricultural and mining sectors could not absorb all the working manpower) is the key to their economic develop-

32. *Supra* note 1, art. 62, par. 1, at 926.

33. *Id.*, art 53, at 923.

34. *Id.*, art 47, par. 3, at 922.

35. Graham, *Diario de mi Residencia en Chile* 220-221 (1972).

36. *The Economist*, November 13, 1976, at 129.

ment. The concentration on one or a few primary-type exports limits the current income, as well as the accumulation of factor supplies, and can accentuate the dependence on private capital exports from the rich countries. In addition, the decline of trade stimulus in primary commodities creates an increasing shortage of foreign exchange earnings from exports to pay for the various imports needed for economic development. The argument is made that Chilean policies are based upon an idealistic conception that Chilean goods will compete with foreign goods abroad. However, foreign markets are internal markets for other countries, the majority of which strongly protect their industries, and such foreign markets are predominantly controlled by transnational corporations.

The Andean Pact countries differed as to the limit of protection afforded by the Common External Tariff. Chile struggled for a Common External Tariff with a maximum protection of thirty-five percent, although its goal was a protection of ten percent. Peru asked for one with a minimum protection of 150 percent. Colombia pursued a minimum protection of seventy percent, and both Bolivia and Venezuela wanted a 100 percent limit. The extreme position taken by Chile is understandable considering that even Brazil has a protection of eighty percent for consumption goods. With the establishment of a Common External Tariff, the countries would have to increase or decrease their existing tariffs, thus causing important tax variations among them. In accordance with the Convention, Bolivia and Ecuador have a longer period for this adjustment which reduces their problems in implementing such a measure. On the other hand, if the Common External Tariff involves higher tariffs, less developed countries will have to increase their cost-of-living. Unless these countries can benefit from the establishment of new industries, they will be in a difficult situation. Consideration must also be given to the effect of a Common External Tariff on the export possibilities, as each country had a different pre-existing economic structure. The Common External Tariff affects the level of exports to third countries. Thus, if the tariff is high, some Andean countries can increase their production as foreign competition is consequently reduced and costs go down as a result of the benefit of a large market. The lower level of costs could make exports to third countries more likely. Nevertheless, the quality of production may suffer. As a result of these conflicts among the Andean countries, no agreement could be reached as to a Common External Tariff by December 31, 1975, the deadline established by the Cartagena Agreement.³⁷

The problem arising from the Common External Tariff is related to other disputed issues. For instance, one of the reasons why transnational corporations, especially those owned by the United States, establish subsidiaries in Latin America, is to obtain exemption from tariff restrictions, while also profiting from the large Latin American market.

In order to create a system of joint planning within the industrial sector, the Convention, in response to the mandate of the Andean Pact, created

37. French-Davis, *Pacto Andino y Libre Comercio*, Mensajc, October 1976, at 505.

38. *Supra* note 1, art. 62, at 926.

the Sectorial Programs of Industrial Development. Such Programs allow a better distribution of benefits from the integration system. In effect, these Programs plan the allocation of industries in the less developed countries in the area, whereas under normal conditions, industries would be established in those countries with better technology, economic infrastructure and an existing market. The Sectorial Programs of Industrial Development establish industries that require high technology and assure a big market for the production.

The Andean parties agreed upon the following provisions: A Decision dealing with products reserved to Sectorial Programs of Industrial Development;³⁹ a Sectorial Program covering a number of metal-working operations;⁴⁰ and a Sectorial Program covering the petrochemical industries.⁴¹ As compared with the goals of the Cartagena Agreement, these agreements were of extremely limited accomplishment. The Approval in August 1972 of the Sectorial Program covering the metal-working sector was a product of two years of negotiations. The fact that the Program required comparatively less investments than other industrial sectors and used a partly developed technology, facilitated its adoption. However, the different degrees of industrial infrastructure among the Andean countries, which led to further conflict between national interests and integrative goals, had hindered approval. The same result was seen in other experimentations with the integration system, such as that of the East African community.⁴² Ultimately, Chile and Peru accepted far lesser allocations than their infrastructures would allow, thus revitalizing the integration system and lending political support to President Allende and General Velasco Alvarado. In addition, the ap-

39. Decision 25 (third period of the Commission's special meetings, December 14, 1970). This Decision determined which products were to be reserved to the Sectorial Programs of Industrial Development.

40. Decision 57 (ninth period of the Commission's ordinary meetings, July 10-14, 1972 — August 17-20, 1972), 16 Grupo Andino 19 annex (1972). This decision states that the parties had to submit to the Board technical information concerning existing production or feasibility studies concerning new production units which have been assigned to them (article four). This requirement had to be fulfilled by September 1974 for Chile, Colombia and Peru, and by September 1975 for Bolivia and Ecuador. The parties presented these documents in August 1974. Therefore, Bolivia and Ecuador acted one year in advance. It has been thought that Decision 57 will represent a production of three hundred million dollars and employment for one hundred and ten thousand workers by 1980. See 38 Grupo Andino 1, 2-5 (1974).

Decision 57 has been modified by Decision 57-a (eighth period of the Commission's special meetings, Sept. 4-9 1972).

For comments on this Sectorial Program see: Furnish & Atkin, *The Andean Group's Program for Industrial Development of the Metal working Sector*, 7 Law Am. 61 (1975); Guerrero, *La Programación Conjunta del Desarrollo Industrial Subregional y el Primer Programa Sectorial de la Industria Metamecánica*, 12 Derecho de la Integración 35 (1973).

41. Decision 91 (seventh period of the Commission's ordinary meetings July 15-25, 1975 and August 26-29, 1975), 48 Grupo Andino 1 annex (1975).

42. The three parties involved, Kenya, Tanzania, and Uganda, were at different stages of economic development due to their different colonial experience. Kenya was the most advanced, followed by Uganda and then Tanzania. Thus, as far as agreeing to locate industries in a balanced manner, Tanzania's policies or priorities are manifestly different from Kenya's. So, for example, Tanzania has put more emphasis on light industries, while Kenya has emphasized consumer products and assembly plants. This divergence in priorities has rendered integration illusory since the parties cannot agree because their needs are different.

proval of this Sectorial Program persuaded Venezuela to become a member of the Andean Pact in February 1973. Once the Commission approved the program covering the metal-working sector, the Board proposed programs dealing with the petrochemical, automotive and chemical fertilizer industries. These three projects were simultaneously considered by the Commission which appointed inter-governmental ad-hoc committees.⁴³ After much debate on these projects commencing in May 1974,⁴⁴ approval was only granted to the petrochemical program in April 1975. As the Sectorial Programs involve allocations in the industrial sector, upon which development depended, the member countries were extremely sensitive to considerations of equity and harmonious benefit. As to the automotive program, an advanced stage of discussion was reached, but no ultimate decision rendered. However, in August 1975, the Commission was able to allocate the final products and vehicles for each country.⁴⁵ The automotive program had encountered serious problems because of Venezuela's desire to get sixty percent of the investment on the basis of its share of the car market, and Colombia's intentions to apportion investment by population, as it was the most populous country with 33.82 percent of the Andean population. The rejection of a proposed automotive program demonstrated how politically delicate the function of the Board had become in proposing decisions to the Commission. This proposal was even attacked by some States as damaging their bargaining position, producing a negative effect on the Commission's discussions.⁴⁶

Since July 1975, efforts have been made at the highest political levels, to reactivate the Sectorial Programs of Industrial Development.⁴⁷ In December 1975, the Board made a Proposal concerning a program for the electronic and telecommunication industries⁴⁸ which has not yet been sufficiently debated.

The Sectorial Programs require great amounts of investment and quick development of technology. Considering the economic situation of the Andean countries, it is highly questionable whether these States can put into practical operation several programs in a short-term period. In addition, the success of the Sectorial Programs depends on the accomplishment made in other areas of the integration efforts, as the delay or non-implementation of a single mechanism affects the chance of success of integration. These Programs would require the effective and homogeneous application of provisions such as Decision 24, Decision 46 on Andean multinational enter-

43. 36 Grupo Andino 2 (1975).

44. Thirteenth period of the Commission's special meetings.

45. Seventeenth period of the Commission's ordinary meeting, 48 Grupo Andino 2 (1975).

46. Amare, *Interés Nacional y Control de Decisiones en un Proceso de Integración*, 18-19 Derecho de la Integración 44 (1975). [hereinafter Amare].

47. Declarations of the Presidents of Venezuela and Colombia (July 1975), Bolivia and Venezuela (August 1975), Colombia and Ecuador (August 1975), Colombia and Venezuela (December 1975); and the declaration of the Ministers of Foreign Affairs of Bolivia and Peru (November 1975). See 47 Grupo Andino 7 (1975); 48 Grupo Andino 9-11 (1975); 51 Grupo Andino 15 (1975); 52 Grupo Andino 3 (1975).

48. Proposal 69. See 52 Grupo Andino 3 (1975).

prises,⁴⁹ and uniform anti-trust laws. However, the parties have experienced significant delays in implementation even where, as in the metal-working program, there exists some basic industrial infrastructure,⁵⁰ such delays are demonstrative of the infirmities in the various internal economic structures of the parties concerned. The deadline for the commission's approval of programs, as provided in accordance with the Cartagena Agreement, was December 31, 1975, with a consensus reached only as to the metal-working and petrochemical industries.⁵¹

The problems incited by the Program of Inter-Regional Trade Liberalization were related to the adoption of the Sectorial Programs of Industrial Development. Both mechanisms had been designed to be parallel, but the Liberalization Program developed at a faster rate. Specifically, the problem concerned products which had been selected for Sectorial Programs, had not been included therein.⁵² Unless the parties established an agreement for those products by December 31, 1975, an automatic reversion to the trade liberalization schedule would occur.

This problem reflects the conflict between national interests and integrative goals. Chile and Colombia felt that by opposing the creation of new Sectorial Programs or, in the alternative, by urging an extension of the time period for agreement, they could benefit from the commercial opportunities of an expanded trade liberalization program. As to the priorities of agreement, Chile thought that consideration of the Common External Tariff should precede the new Sectorial Programs, with the view that the Andean industries should only be established in those productive sectors capable of competing with foreign enterprises.⁵³ On the other hand, Bolivia, Ecuador and Peru argued on behalf of the Cartagena Agreement's principle of establishing Sectorial Programs, as an essential way of achieving the industrialization and economic development of the region. Through the implementation of these programs, Bolivia and Ecuador would have a good opportunity to initiate their industrialization processes. Peru had one of the worst balance of payment deficits on the continent, and its currency was extremely overvalued. Thus, Peru did not argue for the Program of Inter-Regional Trade Liberalization, since its market would be invaded by goods produced in other Andean countries with realistic currency exchanges. Eventually, Colombia and Venezuela agreed to postpone the Convention's time periods for establishing the Sectorial Programs upon those reserved products, in exchange for Peru's flexibility in its position on the Common External Tariff. Chile agreed to modify its attitude if the other Andean countries agreed to new foreign investment regulations and accepted its low level tariff proposal.

49. Decision 46 (sixth period of the Commission's special meetings. Dec. 9-18, 1971), 1 Economic Integration 326. Spanish text in 10 Grupo Andino 6 annex (1971).

50. 53 Grupo Andino 17 (1976).

51. *Supra* note 1, art. 47, at 921.

52. *Supra* note 1, art. 53, at 923.

53. This statement was made by the Chilean Executive Secretary for LAFTA and Andean Affairs. See *Qué Pasa*, Jan. 8, 1976, at 8.

Despite this conflict, the Program of Liberalization proved to be one of the more notable successes of the Andean Pact, due to its automatic and irrevocable character.⁵⁴ As a result of the ten percent automatic annual reductions, with the purpose of achieving total liberalization by December 31, 1980⁵⁵ and the elimination of "restrictions of all kinds",⁵⁶ there was an increase in inter-regional trade. "Restrictions of all kinds" were defined by law as "any measure of administrative, fiscal or exchange character, imposed by unilateral decision of a member State which impedes or hinders importation".⁵⁷ Many of the goods favored by the elimination of restraints were not included in the program of reduction of tariffs. However, the achievements of the program were limited by the lack of efficient infrastructure communications and transport systems among the parties, so that most of the trade increases occurred among neighboring countries. This had the greatest effect on Bolivia, the Mediterranean member.

The increase in inter-regional trade reflects the proposition that even if a country has only gained minimally in this matter as compared to another such country, it is still better off than it would be without the integration system. However, the major inequalities among the parties with respect to inter-regional exports had an important political consequence regarding each country's perception of the benefits received from the integration system. These inequalities were inconsistent with the Cartagena Agreement's goal of beneficial harmony among the parties. The Andean Pact establishes a special regime for Bolivia and Ecuador in the Program of Liberalization, affording them longer time periods and other benefits. Despite these legal measures, practice has proven that existing infrastructures are more determinant. From a technical point of view, there is agreement that the volume and composition of inter-regional trade offers important research possibilities in the models designed to measure the distribution of costs and benefits in an integration system.⁵⁸

The highest inter-regional exports in 1969 were those of Colombia and Peru, which amounted to 25 million U.S. dollars. In 1975, Colombia's exports to the region amounted to nearly 250 million U.S. dollars. This represented a tenfold increase in six years, converting this country into the largest exporter of manufactured goods.⁵⁹ The total amount of inter-regional exports in 1975 reached approximately 600 million U.S. dollars.⁶⁰ If fuel and lubricants exports were included, this total would rise enormously,

54. *Supra* note 1, art. 45, at 921.

55. *Id.* art. 52, at 923.

56. *Id.* art. 46, at 921.

57. *Id.* art. 42, at 920.

58. See Report of the Seminar on the Distribution of the Costs and Benefits in Regional Economic Integration Among Developing Countries (UNCTAD). U.N. Doc TD/B/157 (1975) at 4.

59. A similar concentration of inter-regional exports has occurred in the East African community with respect to Kenya, but without presenting the dramatic rise of Colombia. Within East Africa, Kenya's share of inter-regional exports rose from 62 percent to 77 percent between 1967 and 1974. See Mtei, *Experiences in Regional Economic Integration* 13 (1976).

60. See 57 Grupo Andino 26, 27 (1976).

especially for Ecuador and Venezuela during the years 1973-76. The only decrease in inter-regional exports was the one that affected Chile in 1971-73 when this country suffered its worst political and economic crisis of its history. The Colombian President of FEDEMETAL, the Colombian Federation of Metallurgical Industries, sought to renegotiate the Andean Pact because "Venezuela had burst into an hemispheric power, especially of industrial and financial character, and the preferential treatment accorded to Ecuador".⁶¹ Colombian President López Michelsen said that their inter-regional trade could be compared with that carried out with the United States and Europe, and that the past experience of risks of concentration in only one market could be avoided.⁶² The global increase of inter-regional exports did not solely consist of traditional export goods, but included new products backed by a relatively complex technology, such as the ones included in the Sectorial Program for the metal-working sector. Nevertheless, there was a great difference among the parties with respect to the proportion of manufactured goods of each, as represented by Colombia and Bolivia (the latter with no significant manufactured goods). The Convention allowed each party to present to the Board a schedule of goods presently produced in the region as exceptions to the Liberalization Program, to be submitted by December 31, 1970.⁶³ In this manner the Andean Pact achieved great success, as eighteen percent of that inter-regional trade was comprised of goods which appear in the schedule of exceptions of the importing countries.⁶⁴

However, inter-regional trade represented only a small proportion of total regional exports.⁶⁵ Thus, a former Chilean plenipotentiary commented that, in 1975, Chilean exports benefiting from the Trade Liberalization Program were less than 20 million U.S. dollars, while total Chilean exports were 1,547 million U.S. dollars.⁶⁶ The Liberalization Program also damaged some small and middle-sized manufacturers because they lost tariff protections.

III

A variety of other factors contributed to the Cartagena Agreement's crisis. The lack of compliance with the Andean Decisions was a major contributor to the crisis. Each member was obligated by the Convention to include in its national development plans and economic policies, the measures necessary to ensure fulfillment of process of harmonization of policies and coordination of plans. An agreement to take new economic measures has no value if not accompanied by their internal implementation through appropriate laws and institutions, as well as by a uniform interpretation of the

61. 50 Grupo Andino 4 (1975). (Author's translation).

62. *Id.* at 4.

63. *Supra* note 1, art. 55, at 924.

64. 53 Grupo Andino 14 (1976).

65. This has also been the case in the East African community. The share of inter-regional exports in total East African exports dropped from 18 percent in 1967 to 14 percent in 1974. See Mtei, *supra* note 59, at 13.

66. Ercilla, Nov. 10, 1976, at 33.

rules. This proved to be a difficult task due to the internal legal, economic and political problems experienced by the countries.

A comprehensive study of the degree of the Andean countries' compliance with the Andean Decisions can only occur subsequent to an evaluation of the practical economic effects of their policies and development plans in the period 1969-1976. At the present time, however, it is clear that the parties have neglected their obligation to take the necessary internal legal measures to carry out the Decisions of the Commission. The farewell address of the members of the Board, who had been acting since 1970, contained the statement that the governments were behaving as if they were not represented by their plenipotentiaries in the Commission.⁶⁷ The parties were initially concerned with establishing the internal mechanisms for carrying out the Commission's Decisions, as illustrated by the implementation of Decision 24. Since 1972, however, the failure of prompt internal implementation of the Decisions has resulted in the transformation of these Decisions into formal documents without any practical significance. A vicious cycle thus developed as the parties failed to show any real enthusiasm in implementing the Andean Decisions, due to a lowering of expectations. The argument can be made that the members would have been more active in this respect had the benefits of participating in the integrative experience been shared by all.

This lack of compliance is illustrated by dilatory implementation of the various decisions. Decision 49⁶⁸ and regulations concerned with the harmonization of legislation on industrial development, adopted unanimously in 1971, had not been implemented in any of the countries until 1976, despite their significance. Governing the problems of the exemptions, reductions and rebates on import duties in connection with the Minimum Common External Tariff and the Program of Trade Liberalization, Decision 49 provides a preliminary step towards harmonization of fiscal incentives. As a result of the absence of implementation of Decision 49, the Board would later be less ambitious in its proposals, and thus delay the attainment of higher levels of integration.⁶⁹ This lack of implementation was found among the Andean multinationals (approved in 1971 and not implemented by all the countries until 1976), the common rules to avoid double taxation, and the regulation of internal transportation by highway. These examples form part of the Decisions by which Chile will continue to be bound despite its withdrawal from the Pact in 1976. Member States have shown different degrees of compliance with the Decisions.⁷⁰

The achievement of formal legal compliance may not be enough, as national legislation may contain loopholes which permit policies different from the ones adopted in the Decision. Thus, Chile implemented Decision 24 in 1971, but through Decree Law 600 of 1974, it pursued opposite objec-

67. 53 Grupo Andino 17-19 (1976).

68. Sixth period of the Commission's special meetings, Dec. 9-18, 1971. See 1 *Economic Integration* 350-362. Spanish text in 10 Grupo Andino 14-19 annex (1971).

69. 53 Grupo Andino 17 (1976).

70. Cf., 17 *Derecho de la Integración* 114-123 (1974).

tives. Compliance with one Decision is not sufficient if another that complements it is disregarded. The Andean multinational regulation in connection with the foreign investment code demonstrated that the implementation must be accompanied by effective economic policy.⁷¹ To have meaning, uniform and effective application, which implies common regulations and interpretation, is important in this respect.

There is a need for establishing an Andean Court. A judicial organ, not a political one, as is the Commission, should have the power to give a binding opinion relevant to the adequacy of the internal law in fulfilling the Commission's Decisions. To make this determination, such a court may evaluate the fulfillment of the parties' obligations, the interpretation of the integration system's rules and Decisions,⁷² and the legality of the integration system's acts. The establishment of an Andean Court can also avoid the existence of opposing judicial decisions between the parties' tribunals. In addition, it is highly inconvenient, and often legally impossible, for a national court to be in charge of taking cognizance of the recourses of illegality, interpretation and, especially, noncompliance. The Court's role as interpreter would be of great value, since the Andean countries differ in their definitions of such basic legal concepts as the nature and character of some negotiable instruments.⁷³ Multinational corporations, operating in different member countries, would be governed by different legislation. The existence of an Andean Court would avoid unnecessary political tensions, such as those created by Chilean Decree Law 600, in response to Decision 24. The Board submitted a proposal for the creation of an Andean Court in 1974,⁷⁴ and it is still under discussion.

Another source of conflict over the years was the intense politicization of the integration process seen in the election of the members of the Board, whose term ran to December 31, 1975, and whose election was contingent upon unanimity. The Board is the technical organ, consisting of three members who must act only "in the concerted interest of the region as a whole."⁷⁵ The Board has an essential role in the progress of the integration system, especially through its duty of making propositions to the Commis-

71. Common and effective policies have been difficult to pursue in the East African integration system due to the different political and ideological leanings of the member states. Thus, Tanzania pursues a socialist path of economic growth which generally discourages investments and stresses self-reliance on "ujamaa", while Kenya and Uganda are mixed economies with capitalistic leanings. Also, different stages of industrial development have prevented joint and effective economic policies.

72. Amare, *supra* note 46, at 44.

73. Common interpretation with respect to negotiable instruments would be greatly facilitated through common legislation. The Office of the Secretary General of the United Nations has prepared a DRAFT UNIFORM LAW ON INTERNATIONAL BILLS OF EXCHANGE AND PROMISORY NOTES, U.N. Doc. A/CN.9/WG. IV/WP.2 (1972). This document has received the special attention of the United Nations Commission on International Trade Law, *see. e.g.*, U.N. Doc. A/CN. 9/77 (1973); U.N. Doc A/CN. 9/86 (1974). U.N. Doc. A/CN. 9/99 (1975); and U.N. Doc. A/CN. 9/117 (1976).

74. Proposal 43 (Jan. 18, 1977). *See* text in Bueno, *La Solución de los Conflictos en el Pacto Andino*, 35-42 (1976).

75. *Supra* note 1, art. 13, at 913.

sion, and supervising the implementation of the Agreement. As the Commission was unable to find a solution to this problem of filling the vacant posts, the parties decided unanimously to extend the term of the Board until February 29, 1976, when they held a special meeting to name the new members.⁷⁶ The Board's past members had served with great idealism for two terms, consisting of six consecutive years, and many of the Cartagena Agreement's accomplishments had been due to their action.

In order to quickly harmonize policies and coordinate plans, the parties must agree upon a strategy for development. Through a consideration of its elements, the Andean Pact⁷⁷ would facilitate economic integration, since it would determine in a precise way the objectives and priorities of the integration system, and consider the practical possibilities of any action.⁷⁸ Also, an Andean strategy for development would minimize clashes among the parties from the time the policies are internally formulated. The Board proposed such a strategy in March of 1972, but it has not yet been approved by the Commission.⁷⁹

IV

Between 1970 and 1973, the Andean Pact went through a crisis, although it never reached the proportions of the crisis to come in 1974. However, it did create a great concern about the possibility of future clashes of policies. The election of a socialist-marxist President in Chile at the end of 1970 raised fears about the possible stagnation of the Andean Pact. To alleviate these fears, Allende visited Colombia, Ecuador and Peru in 1971 to assure their leaders that he was willing to support Andean integration. At that time, there were no diplomatic relations between Chile and Bolivia, and Venezuela had not yet adhered to the Convention (this explains why Allende did not visit these countries). As their leftist policies had created many enemies, President Allende and General Velasco Alvarado of Peru needed this integration system for political support. But, by the beginning of 1973, after Allende had radicalized his economic policies, Chile was suffering from the worst political and economic crisis of its history. Thus, Chile was unable to carry out the Andean goals in the way in which it might have been capable of doing under normal conditions. Chile began to ask for exceptions, while simultaneously making innumerable declarations supporting the Andean Pact.⁸⁰ In 1973, with Venezuela's adherence to the Convention taking place in February, and Pinochet's coup d'état occurring in September, no Decision was adopted dealing with either the harmonization of policies or any other topic. Thus, concentration of the parties' efforts on

76. Nineteenth period of the Commission's ordinary meetings December 9-12, 1975 and December 26-31, 1975.

77. *Supra* note 1, art. 25, at 916.

78. Moore, *Algunas Impliaciones para América Latina del Experimento de Integración Europea*, in *Factores para la Integración Latinoamericana* 89 (1966).

79. "Bases Generales para una Estrategia Subregional de Desarrollo." A summary of it has been published by the Board pursuant to a recommendation of the Planning Council. See text in: 13 Grupo Andino annex (1972).

80. See, e.g., the declaration of the Chilean Foreign Minister in the fourth meeting of the Andean Ministers, August 1-4, 1973, 27 Grupo Andino 32 (1973).

this incorporation did not prevent the adoption of those Decisions. Rather, increasing divergencies had already appeared among the parties and the Chilean internal situation was having an impact on the integration system.

The end of December 1975 came without any agreement regarding the essential mechanisms upon which the future of Andean integration would depend. Previously, efforts at the highest level were made to reactivate the integration process. Now, the Commission held special sessions in March and April of 1976, the last one resulting in approval of several Decisions.⁸¹ Decisions 98 and 101 established special treatment for Bolivia with regard to its Mediterranean condition and its inferior economic situation. Decision 99 established new rules regarding the Sectorial Programs of Industrial Development which eventually were reformed by Decision 105.

Decision 100 was the most important of that group of resolutions. This Decision was unanimously adopted after several months of intense negotiations, and extended the time periods for the Industrial Program, the Program of Inter-Regional Trade Liberalization and the Common External Tariff. On August 14, 1976, the plenipotentiaries of all the parties except Chile signed the "Additional Protocol to the Convention," which contains Decision 100 plus an additional article.⁸² This provision states that the Protocol will be in effect when the members of the Andean Pact have approved it, in accordance with their respective internal legal procedures, and have communicated this approval to the Executive Secretary of LAFTA.⁸³ This article added that if the protocol was not in effect within sixty days after August 14, 1976, the States that had signed and ratified it would agree as to the application of the Andean Pact's rights and duties to those that had not taken these actions. In addition, the representatives of the five signatories to the Additional Protocol signed the Declaration of Boyoca, formalizing their criteria regarding Decision 24 and the Common External Tariff.⁸⁴ These parties called upon Chile to reactivate the Andean integration by ratifying the Additional Protocol, while reiterating their intention to allow Chile a special regime of limited duration dealing with the rights and duties of the Cartagena Agreement and its Decisions.⁸⁵

On October 5, 1976, the five signatories and Chile subscribed to a Protocol,⁸⁶ in which they agreed to establish a joint Committee to create, within the following twenty-four days, a special transitory regime for Chile, which would be an "associate" member. The Protocol stated that if this time period passed without an agreement being reached, Chile would then withdraw from the Andean Pact, and its rights and duties under the Agreement would cease on the following day, October 30, 1976. This is what ultimately occurred. However, Chile continues to be bound by a group of

81. 54 Grupo Andino 1-5 annex (1976).

82. 57 Grupo Andino 2 (1976).

83. The fact that this communication has to be made to this Executive Secretary is a reminder that the Andean Pact is legally under LAFTA's scheme, serving as a "frame treaty."

84. See 57 Grupo Andino 2 (1976).

85. 58 Grupo Andino 7 annex (1976).

86. 59 Grupo Andino 1 annex (1976).

Decisions of potential significance.⁸⁷ The degree of internal implementation of these Decisions, as well as the fact that they will not be fully effective until applied within an integrative scheme, demonstrates their questionable importance. These Decisions refer to Andean multinationals, the avoidance of double taxation,⁸⁸ internal transportation by highway among the parties,⁸⁹ and an inter-regional highway network.⁹⁰

A mixed Andean-Chilean commission was formed by the Commission and a plenipotentiary representative of Chile.⁹¹ The purpose of this mixed commission was to supervise the application of those Decisions binding on Chile, and to promote industrial, commercial, financial and technological cooperation.⁹²

Immediately after Chile's withdrawal, the parties promulgated Decision 105,⁹³ and the Protocol of Lima,⁹⁴ which extended time periods even further than Decision 100. Decision 105 provided that the Commission approve or reject, before June 30, 1977, all Board proposals for Sectorial Programs in the automotive, electronic, telecommunication, siderurgical and chemical fertilizer industries. By October 31, 1977, all proposals in other industrial sectors were to be acted upon. In addition, Decision 105 stated that the Commission must create the Special Program in Support of Bolivia by March 31, 1977. This program was established in Decision 98 to allow a prompt and proper use of the allocations given to Bolivia within the Sectorial Programs of Industrial Development, as well as to enable Bolivia to take full advantage of the Inter-Regional Trade Liberalization. The time limit to approve the Common External Tariff and to take action on those products which have been selected for Sectorial Programs, but not yet included, was extended until December 31, 1978, by the Protocol of Lima. This Protocol also extended the time period in which the Program of Liberalization must achieve full operation until 1990. In addition, this document establishes that now the Common External Tariff will include levels of maximum and minimum protection for regional production, which could eventually lead to conflicts among the parties because of distortion of com-

87. This situation is regulated by Decision 102 (twentieth period of the Commission's ordinary meetings, August 4, 1976 and Oct 30, 1976), 59 Grupo Andino 7-8 annex (1976).

88. Decision 40 (seventh period of the Commission's ordinary meetings, Nov. 8, 1971). This Decision was adopted in Compliance with the Cartagena Agreement art. 26, par. d, *supra* note 1, at 917, and art. 89, *id.* at 932.

89. Decision 57 (eighth period of the Commission's ordinary meetings, March 13-18, 1972), 11 Grupo Andino 1-3 annex (1972). This Decision is complemented by Decision 69 (tenth period of the Commission's ordinary meetings, Nov. 14-17, 1972), 19 Grupo Andino 7-12 annex (1972). Both Decisions were adopted in connection with the Cartagena Agreement, art. 26, para *supra* note 1, at 917 and art 86, *id.* at 931.

90. Decision 94 (nineteenth period of the Commission's ordinary meetings, December 9-12, 1975 and December 26-31, 1975), 52 Grupo Andino 1-6 annex (1975).

91. This Commission was created by the *Declaración Conjunta Grupo Andino-Chile* of Oct 30, 1976, 59 Grupo Andino 3 annex (1976).

92. For a review of the last negotiations between "the Five" and Chile, see *Qué Pasa*, November 4, 1976 at 4.

93. 59 Grupo Andino 11 annex (1976).

94. *Id.* at 5.

petition. Decision 104 reduced the average protection of the Minimum Common External Tariff from forty percent to twenty-eight percent.⁹⁵

The major efforts made by the five signatories to the Additional Protocol to keep Chile inside the integration system reflect the importance of the Chilean population, which is 13.40 percent of the Andean total. Although its present economic situation is difficult, Chile, which historically has had one of the largest middle classes in Latin America, can regain its importance as a market. Chile also has one of the most notable industrial infrastructures in the region, as well as trained professionals and technicians — a factor that is relevant to the successful functioning of the Sectorial Programs of Industrial Development.⁹⁶ However, many Andean Pact Decisions should be re-negotiated, since they were adopted with Chile's interest taken into account. This is especially true with regard to the Industrial Program. In this integration system, each resolution represents the result of a chess game where negotiations balanced long and short term interests of the parties. Often a country accepted a Decision because it was obtaining other benefits from an unconnected resolution. Thus, a complete revision of the Commission's Decision is necessary in theory, but improbable in practice. The difficulty of this process of revision is well illustrated by the hard negotiations that preceded Venezuela's adherence in 1973.

Despite the inconveniences caused by the Chilean withdrawal, the continued participation of this country in the Andean system, in its present political state, would have brought about the complete stagnation of the integration process. On the other hand, the costs of Chile's withdrawal are high. From an economic standpoint, Chile has lost an important market, especially for certain industries such as those in the metal-working sector. For example, it has been estimated that an enterprise that produces refrigeration systems once exported seventy-five percent of its production to the Andean countries, as there were no tariffs. Now, it will have to pay a tariff of seventy percent to enter that same market, and therefore cannot compete with United States, French, Japanese or Brazilian goods. At the same time, the exportation of refrigeration systems is prohibited in Brazil, and in Argentina the enterprise must pay tariffs of 100 percent.⁹⁷ This diminution of the Chilean market has consequences for its industrial production and employment rate. Chilean industrial superiority over most of the other members guaranteed future benefits from its industrial exports to the region. Chile has now also lost the possibility of being associated with Venezuela, the only Latin American country capable of being a significant investor in the continent. From the political perspective, the Andean Pact offered Chile several

95. *Id.* at 11.

96. The term "industrial infrastructure" is employed in a broad sense. It includes elements such as computation capabilities. In this respect, according to the United Nations categorization, which depends on the level of data processing sophistication, the Andean countries can be classified in the following way: initial to basic: Bolivia and Ecuador; basic: Chile, Colombia and Peru; basic to operational: Venezuela. In Latin America, only Argentina, Brazil and Mexico are in a fully operational situation. See Barquin, *Computation in Latin America*, 11 Latin American Research Review 76 (1976). Therefore, Chile's withdrawal has an impact upon the general Andean level of computation capabilities.

97. Ercilla, November 10, 1976, at 35.

advantages. Among those advantages were a close association with Colombia and Venezuela (the only democracies in South America), close contacts with the bordering countries of Bolivia and Peru (the only countries presenting possible future military conflicts), and participation in a common enterprise with Ecuador and Venezuela (two of the world's chief oil exporting countries).

At the time of Chile's withdrawal from the Pact, Chilean Officials discussed the possibility that now Chile might join the members of the River Plate Basin system (Argentina, Bolivia, Brazil, Paraguay, and Uruguay), with whom Chile would feel more politically compatible. However, this body does not represent an economic integration; rather, it is a treaty of physical integration of the River Plate Basin, a zone to which Chile does not belong. Chile's position in that scheme would be one of dependence in relation to the industrial, technological and agricultural advantages of association with Argentina and Brazil.

V

For the remaining parties in the Cartagena Agreement, the major task of reactivating this system remains ahead, especially since important time restrictions must be fulfilled by 1977-78. To accomplish this task, these countries should concentrate their efforts on bringing about a change in the problem of non-implementation of the Commission's Decisions. The Board and the Andean intellectual communities should take a special role in creating this awareness. After six years of experience, the Board also noted an administrative attitude of negligence in the Andean countries.⁹⁸ Unfortunately, the Cartagena Agreement has not been accompanied by supportive attitudes from a broader spectrum of forces than the intellectual elite, as great ignorance about the integration goals exists among the bureaucrats and technicians that are concerned with these matters. The idealism of the national offices in charge of integration affairs is insufficient, considering their budgetary and personnel limitations. The integration offices have to deal with other bureaucratic departments on which they often depend for information, and the elaboration of studies and execution of projects. This ignorance is even more accentuated at the level of general public opinion. Hence, the governments did not feel any internal pressure to motivate them to take any practical steps toward implementing the Decisions, and history shows that the governments of many Andean countries tend to act more effectively under this kind of pressure. It is necessary, then, to initiate educational campaigns in which the press can, and is encouraged to play an active role. Courses on economic integration should be compulsory in the Schools of Law, Political Science and Economics, and seminars dealing with the topic should be carried out in the Ministries. The Catholic Church perceived this situation when it proposed an intense discussion of the Cartagena Agreement within the Andean community.⁹⁹ Another reason for public apathy towards the integration process has been the failure of the

98. 53 Grupo Andino 17 (1976).

99. See 40 Grupo Andino 12 (1972); 54 Grupo Andino 6 (1976).

parties to incorporate workers and consumers into the elaboration and discussion of projects.

In addition, some structural changes must occur. One of those reforms would require that the Board name a national of each State to supervise the practical steps taken in that country towards fulfilling the integrative goals: a type of "Andean Comptroller." This person could be tenured for two years and could be re-elected by the Board for additional terms. His function would be that of special liaison between the Board and the President of his country. This person could be empowered to make public evaluations of the role played by his country in the integration process.¹⁰⁰ Another step in this direction could simulate the one taken by Peru, a country which established the Ministry of Integration in 1976,¹⁰¹ whose function was to propose a national policy of integration, direct its execution, and promote the necessary national actions to insure Peru's participation in the economic and social integration of Latin America. This is an important step since the strength of the important bureaucratic interests within a government vary according to budgetary and personnel considerations.¹⁰² Thus, the Ministry could press for the fulfillment of the Decisions in a position of equality with respect to other Ministries, and would be better able to centralize information and carry out projects.

Other ways to reactivate the process are to establish a judicial system, agree upon a common strategy for Andean development, and concentrate more attention on those matters in which harmonization of policies is discretionary. Other measures would be the inception of the process of the coordination of national development plans, improvement of the national decision-making process as related to the implementation and proposal of Decisions, the establishment of common regulations and interpretation for the Decisions and related laws, and implementation without delay of those Decisions designed to complement others already implemented. The maintenance of the independence of the Board, development of a more critical attitude on the part of the Board and the Andean intellectuals about the integration process, and attaining consensus on essential aspects of economic policy with an undisturbed stability over time are other ways to reactivate the process. In addition, the member nations must be aware of the dangers of an increasing politicization of the process, of the prevalence of national interest over integration goals, and finally, of the unequal benefits derived for the parties from the system.

100. This reform is legally possible. See Cartagena Agreement, art 15, par. a, *supra* note 1, at 913.

101. Decree 12, 549 of the Council of Ministers. See 56 Grupo Andino 8 (1976).

102. In connection with the bureaucratic model, see, e.g., Allison, *The Essence of Decision* (1971); Destler, *Presidents, Bureaucrats, and Foreign Policy* (1972); Halperin, *Bureaucratic Politics and Foreign Policy* (1974); Allison, *Conceptual Models and the Cuban Missile Crisis*, 63 Am. Pol. Sci. Rev. 689 (1969); Allison and Halperin, *Bureaucratic Politics and Some Policy Implications*, 24 World Pol. 40 (1971-72); Art, *Bureaucratic Politics and American Foreign Policy*, 4 Policy Studies 467 (1973); Krasner, *Are Bureaucracies Important?*, 7 Foreign Policy 159 (1972); Thompson, *On the Making of U.S. China Policy 1961-1969*, 50 the China Q 220 (1972).

External factors can also play an important role in this reactivation of the Andean Pact, as is demonstrated by that played by the "Rosenthal Report" with respect to the Central American Common Market.¹⁰³ Among these factors can be the influence of foundations, governments and international organizations.¹⁰⁴ An important first step in this regard has been taken by Canada which contributed Canadian \$2,850,000, not reimbursable, in the midst of the discussion in which the future of the integration system was being decided.¹⁰⁵

103. The Rosenthal Report was elaborated by the Permanent Secretariat of the Central American Common Market in collaboration with other regional institutions and international agencies such as UNCTAD. It contains a detailed study of the evolution of the Central American integration and its future perspectives. See text: *El Desarrollo Integrado de Centroamérica en la Presente Década*, Secretaría Permanente del Tratado General de Integración Económica Centro Americana (1973). For a study dealing with the report see, Willmore, *Second Thoughts on Central America*, 13 *Journal of Common Market Studies* 280 (1975).

104. The Latin American integrationist movement has arisen principally by the initiative of the Latin Americans themselves. Nevertheless, especially at its very beginning, foreign influence played a major role. In connection with the point see Vargas-Hidalgo, *The Process of Integration in America*, 57 *Revista de Derecho Puertorriqueño* (1977); 15. *Comp. Jur. Rev.* (1978).

105. 55 *Grupo Andino* 2 (1976). Previously, in September 1971 and March 1973, Canada had only given (Canadian \$800,000) to the Andean Pact.