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# THE ANDEAN GROUP'S PROGRAM FOR INDUSTRIAL DEVELOPMENT OF THE METALWORKING SECTOR: INTEGRATION WITH DUE AND DELIBERATE SPID\*

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and

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## I. INTRODUCTION

About four and a half centuries ago, Pizarro took a scruffy band of adventurers into the Peruvian Andes and through a series of unlikely events and circumstances toppled the Inca Empire. Through military strength, ingenuity, a highway system and astute administration of politics and economics, the Incas had accomplished what their Spanish and Creole successors have often desired, but never attained: a stable integrated economic unit extending over the better part of the Andean mountain range and its environs.<sup>1</sup> Recent events probably have brought the modern day nations that occupy the same area closer to recapturing the Inca unity than ever before.

The focus for such hope is the Andean Group, a common enterprise of six countries running down the western coast of South America from Venezuela to Chile, formalized by the 1969 *Acuerdo de Cartagena* signed in Colombia.<sup>2</sup>

The Andean Group is directly related to the Latin American Free Trade Association (LAFTA), being constituted as a subregional structure

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within LAFTA's regional framework.<sup>3</sup> The Cartagena Agreement has profited from the problems of LAFTA. The Andean Group is formulated to become a common market. Its basic document provides for subregional trade liberalization, a common outer tariff, harmonization of laws and policies, and guarantees that all members will be equitably served by the process.<sup>4</sup> Schedules and deadlines are complete and definite in the basic pact,<sup>5</sup> and have been met for the most part, although the late entry of Venezuela in 1973 has caused some alterations and delays.<sup>6</sup> Current political unrest in some of the Andean Group countries, particularly as manifested by the attitude of the Chilean *Junta* toward the subregional program, threatens serious disruption and further delay.<sup>7</sup> Still, unless it comes completely apart, by the early 1980's most of the subregional program should be operative, with final conformation complete by 1990. The highest authority in the Andean Group is its Commission, made up of one cabinet-level representative from each country, whose "decisions" are the fundamental norms of the system after the Cartagena Agreement.<sup>8</sup> A permanent three-member Junta, based with its staff in Lima, has been chiefly responsible for policy formulation and should take increasing responsibility for implementation and execution of the Commission-approved programs.<sup>9</sup> The *Junta* acts through "resolutions," and is responsible for proposing and drafting the Commission's decisions.<sup>10</sup>

Whatever adjunct concerns it may manifest, the principal objective of the Andean Group is to bind participant countries into an economic development unit and achieve a modern industrialized society in common. This is an ambitious goal, and while the Andean Group has achieved an auspicious start the real acid test of its viability is at hand. The true measure of the integration effort embodied in the *Acuerdo* may be found in its sectorial programs of industrial development (SPID).<sup>11</sup> This article will develop that proposition and hopefully reveal some measure of the Andean Group's prospects by analyzing the only SPID as yet approved by vote of the Commission, the metalworking program set up by Decision No. 57 of 20 August 1972.<sup>12</sup>

## II. LAFTA AND CACM, PRECURSORS TO THE ANDEAN GROUP AND SPID

To understand the Andean Group and its SPID mechanism, a knowledge of the failing attempts at economic integration in the Latin

American Free Trade Association (LAFTA) and the Central American Common Market (CACM) is probably necessary.<sup>13</sup>

#### A. Latin American Free Trade Association

1. *LAFTA's Basic Scheme.* In its expression of general principles and intentions there is not much to fault in the Treaty of Montevideo. From the preamble to the end, the document which created LAFTA is shot through with concern for the economic development of all participant countries, with awareness of the "special situation of relatively less developed countries"<sup>14</sup> within the group, and with a positive attitude toward the planning and coordination of production throughout the free-trade zone.<sup>15</sup> Laudable expressions of concerns and intentions are no better than their practical application, however, and if agreement on guiding principles was simple, it proved a commodity which was more difficult to obtain when the question of specific institutions, mechanisms, and obligations was at issue.

Essentially a scheme of multilateral tariff reduction, LAFTA worked reasonably well in extending concessions or preferences, some of which already had been granted in bilateral treaties, for products traditionally traded among most member states, and particularly among those of the Southern Cone. The Treaty of Montevideo provided for two primary methods of tariff reduction: (1) an annual conference to engage in bilateral negotiations resulting in a National List of tariff concessions;<sup>16</sup> and (2) at three-year intervals beginning in 1964, irrevocable agreement by all LAFTA members on a Common List of items representing 25% of the volume of intra-LAFTA commerce, "substantially all" of which was to be placed in free trade at the end of the fourth common-list session in 1973.<sup>17</sup> A secondary (at least in the sense that there was no provision for specific or periodic obligations under its aegis) method of negotiated tariff reductions were complementation agreements.<sup>18</sup> In this form, several participant countries could join in duty-free exchange of parts and inputs involved in the production of a given manufactured product or product line, which would then be traded duty-free among the participating countries.

2. *LAFTA's Shortcomings.* The Treaty of Montevideo's concentration on removing tariff barriers created a situation in which the rich, or most developed, heavyweights — Brazil, Mexico, Argentina — got richer, the middleweights — Chile, Colombia, Venezuela, Peru, Uruguay — got poorer, and the lightweights — Ecuador, Bolivia, Paraguay — lagged pain-

fully behind. Ultimately the inflexibility of those benefitted towards the initiatives for change on the part of other member states was more serious than any disfunctional aspects of the original LAFTA scheme, which after all was drafted to be flexible.<sup>19</sup> Indeed, the lack of sensitivity on the part of the big three to the plight of their less-developed brethren has been blamed for "all the major conflicts that arose in LAFTA."<sup>20</sup>

It is easy to trace the advantages which accrued to the heavyweights under LAFTA. For example, between 1960 and 1969, the intra-LAFTA exports of the three most developed countries increased \$535 million dollars, or about 233%, while imports from within the association grew by about \$362 million, only 105%. During the same nine-year period following the instigation of LAFTA, intrazonal exports from the Andean Group countries had increased by \$195 million, or about 78%, while LAFTA imports to them went up by \$292 million, or close to 158%.<sup>21</sup> The heavyweights were not only enjoying more of the quantitative benefits of integration under LAFTA, they were at the same time monopolizing the all-important manufacturing industries. As early as 1965, more than 75% of all manufactured goods originating in Latin America were produced in Argentina, Brazil, or Mexico.<sup>22</sup> To use one important example, during this same period, Argentina and Brazil accounted for 95% of the intra-LAFTA exports of non-electrical machinery.<sup>23</sup>

3. *LAFTA and Complementation Agreements.* In theory, complementation agreements — originally only sketchily authorized by the LAFTA Treaty as an adjunct to the liberalization program — might have served the industrial planning function lacking in the tariff-concession lists and helped immensely to disperse benefits equitably among all LAFTA countries.<sup>24</sup> In practice complementation agreements have suffered from many of the same problems which beset the liberalization programs: an overly-general recognition of problems in an overly-flexible legal framework. As with other LAFTA mechanisms for integration, the heavyweights grabbed a lion's share of the benefits available under complementation agreements. Twenty agreements have been approved to date by the contracting parties. Few have not included more than one of the three dominant countries; many have included all; only one has excluded all three.<sup>25</sup>

The Treaty of Montevideo describes complementation agreements as a means of coordinating and harmonizing the industrial policies of the LAFTA countries through cooperative planning and agreements to rationalize production, but it was Resolution 99(IV) in 1964 which established

*Norms and Procedures for Complementation Agreements.*<sup>26</sup> Although Resolution 99(IV) shows a substantial concern for industrial planning and equity for less-developed countries,<sup>27</sup> no concrete guarantees are included, nor any specific obligations created.<sup>28</sup> The initiation of complementation plans is left to private enterprise. Open access to any agreement for any member guarantees that a heavyweight's industry may enter in at any time.

Private enterprise has shown a tendency to utilize complementation agreements, but — logically enough — often for the rationalization of multinational firms' operations in a few sectors and seldom with any concern for overall planning and development. Member governments, who must sponsor the programs in LAFTA, have not imposed such criteria. Although LAFTA has sponsored annual sectorial meetings which may have aided industrial planning, its essential approach has never deviated from an uncritical welcome for complementary (foreign) investment, apparently on the outmoded theory that it naturally must have a positive effect. By 1967 sufficient dissatisfaction had surfaced that a resolution was adopted calling for study of the regime of complementation agreements and the proposal of solutions to the continuing problems of the less developed countries and their lack of participation.<sup>29</sup>

## B. Central American Common Market

1. *CACM and Integration Industries.* Although not as closely attached to CACM as to LAFTA, the Andean Pact has built upon CACM's experience.<sup>30</sup> The Central American countries' program has been the most successful of the Latin American efforts at integration to date, despite its current state of affliction. The five member states were concerned that intra-regional free trade and a common external tariff alone would not bring about industrialization and equitably-distributed development, so they derived the concept of "integrated industries."<sup>31</sup> Imposing criteria that LAFTA's complementation agreements had not imposed, integrated industries were to involve products important to CACM as a unit. Each such industry would be assigned to a participant, with no country taking a second integrated industry until all five countries had at least one.<sup>32</sup>

Integrated industries were an import-substitution scheme on a sub-regional scale. For a ten-year period, duty-free imports of raw materials and intermediate goods were permitted while exclusive external tariff protection and exclusive access to free regional trade were provided to the designated industry.<sup>33</sup> There was to be close regulation by CACM

officials and agencies, which issued quality-control standards, price controls, and regulations on sources of capital.<sup>34</sup> Any intra-regional competitor who wishes may set up an industry duplicating that of an already established integrated industry, which loses 10% of its intra-regional tariff protection each year after establishment until all CACM trade in the item is on a free basis.<sup>35</sup> This possibility apparently was intended as a means of keeping integrated industries honest and efficient by exposing them to competition.

2. *CACM's Problems.* The CACM has had a strong positive effect on intra-regional trade, but only three integrated industries have been approved in its thirteen years.<sup>36</sup> The latter may be a better indicator of CACM's real achievement, or lack thereof, than trade statistics. Even before the Football War in 1969, CACM was troubled by the same issue that bedeviled LAFTA: the unequal distribution of integration's benefits. Although intraregional trade rose more than 35% annually through the first ten years of CACM's operation, from \$21 million to \$260 million,<sup>37</sup> Guatemala and El Salvador accounted for more than 70% of intra-CACM industrial trade, while Nicaragua and Honduras were experiencing increased regional trade deficits.<sup>38</sup>

Like LAFTA, CACM's structure was too flexible and too confident of the capacity of the member countries to negotiate equitable resolutions of sticky issues. In the CACM, the burden was placed on private interests to initiate proposals for integrated industries, but they did not respond. Integrated-industry status may not have been worth much: a Costa Rican tire and tube factory opened after the establishment of the same sort of enterprise as an integrated industry in Guatemala. The entry of the second plant probably indicates not only a lack of meaningful intra-regional protection, but also the failure of the scheme to function as an instrument of coordination for regional industrialization.

### C. The Andean Group's Reliance on Integration for Industrial Development.

Small wonder that Germánico Salgado, current coordinator of the Andean Group *Junta*, draws as the "first conclusion of [the LAFTA and CACM] experience . . . : no integrated society can result when any country participant in the integration process, after comparing costs and difficulties required by the process, which are many, with concrete results obtained and obtainable, does not persistently perceive a clear positive balance."<sup>39</sup>

Salgado's reference is to something deeper than simple trade balances; circumstances became so unbearable for the more disadvantaged countries because they were relying on successful integration for development. As various observers have noted, it is one thing when some participants are gaining greater benefits than others, but all are developing at a high rate of growth which is satisfactory to each country's expectations.<sup>40</sup> It may even be unimportant whether integration is playing much of a role in an individual country's performance; all countries will still be more apt to be magnanimous and, in Professor Behrman's phrase, "it is relatively easy for the negotiating countries to put the problems of integration on the other side of the table . . . and face them together."<sup>41</sup> It was the marked absence of such a unanimity of satisfaction with the process that bedeviled LAFTA, for a number of its member states saw integration as their only means to the ends of industrializing their economies and modernizing their societies. In early 1965 President Eduardo Frei of Chile petitioned four of Latin America's most prestigious economists for an overall review of LAFTA's program.<sup>42</sup> The ambitious program drafted in response to Frei's initiative had virtually no effect on LAFTA, but the President's Conference held at Punta del Este in 1967 adopted its endorsement of economic integration as essential to development in Latin America.<sup>43</sup>

### III. THE BASIC CONCEPT OF SPID

The Andean Group is first and predominately a vehicle for regional industrialization. Though it may have other concerns, the major commitment and enthusiasm of the *Acuerdo de Cartagena*, its *Junta*, and its Commission is invested in the belief that an effectively industrialized society will prove to be a developed society.<sup>44</sup> Effective industrialization warrants some definition in this context. It must both take care that all member countries arrive at a common satisfactory stage of development when its program is complete and strive to create a subregional industrial power capable of competing in the world market. As Salgado sums it up, "The stability of the integrated society as well as its efficiency thus depend on industrial programming."<sup>45</sup> It is in this sense that one may remark that SPID hold the key to the future economic development of the Andean subregion and Latin America.

The basic approach is pitched at efficiency through economies of scale beyond the capacity of any individual Andean country's market.<sup>46</sup>



By increasing the economic base, and greater expansion and diversification of production, maximum utilization of available resources may result. Several studies have recently focused on the feasibility of such gains in efficiency within the Andean Group.<sup>47</sup> The consensus, not surprisingly, is that reduced production costs and increased return on investments should result from production on a subregional scale.<sup>48</sup>

In some ways the relative lack of industrial development and existing investment in manufacturing in the Andean Group may be to its advantage, for industrial planners will need to contend with fewer entrenched interests. The SPID have tentatively singled out several key sectors, chosen not only because they constitute the basics for overall industrial development, but because they will "generate secondary and tertiary industries."<sup>49</sup> It takes little imagination to conceive of the immense forces and countervailing interests which must be reconciled to achieve the goal of equitably planning an internationally competitive industrialized subregion.<sup>50</sup> The task is one of staggering dimensions, and the *Junta* is already far behind its timetable, which would have seen SPID approved by the end of 1975<sup>51</sup> at least for the chemical and petrochemical sectors, the pulp and paper industry, food processing, automobiles, electrical engineering, electronics, metallurgy, nonmetallic minerals, metal-working, and iron and steel.

Part of the delay may be due to Venezuela's late entry, but in any case it is probably more because of the magnitude of the problem than because of any lack of capacity on the part of the Andean bureaucracy. The continually darkening political situation in several of the Andean Group countries will of course add another imponderable to the mix.

#### A. Institutional Supports for SPID

One of the successes of the Andean Group has been the assured fashion in which it has gone about establishing a foundation of concrete mechanisms and policies for its program of industrialization. Decision No. 57's sectorial plan for the metalworking industry was not approved until more than three years after the inception of the Cartagena Agreement. Previous to that time, in 1968, the charter of the Andean Development Corporation had been signed.<sup>52</sup> After the Pact itself, such well-known decisions were passed as No. 24 on Foreign Investment and Technology Transfers,<sup>53</sup> No. 46 on Multinational (read Andean) Corporations,<sup>54</sup> No. 40 on Avoidance of Double Taxation,<sup>55</sup> No. 56 on International Road Transport,<sup>56</sup> and a series reserving products for SPID,<sup>57</sup> for Bolivian

and/or Ecuadorian production,<sup>58</sup> or for other designations.<sup>59</sup> Finally, in March 1972 the *Junta* presented the Commission with the comprehensive *General Bases for a Subregional Strategy of Development*,<sup>60</sup> a multi-volume report crammed with statistics and projections on key industries, among other things.

Most of the excitement generated by the Andean Group to date is due to the above programs. Particularly in its vanguard approach to the old problem of foreign investment and technology in underdeveloped countries, the Andean program has not only been noted but imitated.<sup>61</sup> This is not altogether surprising for it is probably true that the sub-regional effort has become the single most effective outlet for much of the expertise concerning Latin American and Third World economics emerging in the last decade and a half. Integration expertise built up in LAFTA, CACM, and even the European Economic Community has flowed to the Andean Group. *Junta* headquarters in Lima are staffed by a formidable group of experts, and their consultants have been picked from the world's best. Still, the glitter of the early decisions must not be allowed to hide the fact that they are primarily supportive. Their *razón de ser* is to create a complete institutional framework within which the Andean Group's prime objective of industrial planning and development may be served effectively and expeditiously.

#### B. General Characteristics of SPID

The basic concept of SPID may owe something to LAFTA's complementation agreements<sup>62</sup> and CACM's integrated industries, but the more recent manifestation has several advantages. Because of the institutional framework noted immediately above, SPID will have a much better working environment. There is provision within the existing system to anticipate and handle most contingencies. While complementation agreements or integrated industries ideally might function identically to SPID, they — like LAFTA and CACM themselves — were cast in such flexible legal molds that national self-interest easily frustrated their potential.

In some measure SPID may be antithetical to free enterprise. The programs' most basic objective is to award potential subregional monopolies to member countries. SPID's planned approach to industrial development will initiate and dictate rather specific terms of location, size, and product to investors. In fact, this ought to cause little discomfiture for many businessmen (*e.g.*, Japanese, European) accustomed to *dirigiste* govern-

ments, but even if it should, prior consultations with business and ultimate increased production and profits ought to more than offset any restrictions on business discretion.

All SPID must include, as required by the Cartagena Agreement:

1. A list of those products included in the program, indicated in *Andean tariff nomenclature*, NABANDINA;<sup>63</sup>
2. Designation of plant sites by nation throughout the subregion;<sup>64</sup>
3. A common outer tariff for the sector covered by a given SPID;<sup>65</sup>
4. Periods during which a country must or may maintain its rights and obligations under a SPID even though it has renounced the Andean Pact;<sup>66</sup>
5. Exclusive advantages and other special treatment for Bolivia and Ecuador;<sup>67</sup> and
6. A liberalization schedule which opens the subregional market to SPID products.<sup>68</sup>

There is some flexibility in these elements. Although earlier decisions had reserved a series of products for SPID, any product classified under NABANDINA may be included in a SPID.<sup>69</sup> This may be important after 1975, for the formulation and approval of SPID appear almost certain to continue after the time period for which the original comprehensive list is effective.<sup>70</sup> It may also be possible to draft programs in which all plant sites are not designated, although presumably the free choice of plant site would not be extensively used.<sup>71</sup> The special provisions for Bolivia and Ecuador of course may be more or less extensive depending on which sector is being planned.

There are several potential elements whose use and substance will be dictated by the special considerations of the sector treated by a given SPID:

1. Joint programming of new subregional investment and measures to assure financing;<sup>72</sup>
2. Harmonization of internal policies and legislation wherever they might otherwise hamper a given SPID;<sup>73</sup>
3. Liberalization schedules which may set up different time periods for different products and countries, always retaining the ultimate free-market obligation;<sup>74</sup>

4. Cooperation necessary to assure the infrastructure indispensable to any given SPID, with special consideration for Bolivia and Ecuador;<sup>75</sup>
5. Specific requirements for certification of products' origin for a given sector.<sup>76</sup>

By their nature, these elements may prove unnecessary for a given SPID, but it seems unlikely.

### C. The Formulation of SPID

1. *Packaging the Program.* The path to final approval of a SPID is arduous. The *Junta* begins with the list of products reserved for SPID by Decision No. 25.<sup>77</sup> These tend to be products which are not produced or are "scarcely developed"<sup>78</sup> within the Group countries, although no SPID is limited strictly to the list of products set down by Decision No. 25 in 1970. That preliminary list is composed of heavy industry classification which falls into the following specific sectors: chemicals, petrochemicals, electrical engineering, electronics, pulp and paper, nonmetallic minerals, metallurgy, food processing, metalworking, motor vehicles, and iron and steel.<sup>79</sup> Here economies of scale and other efficiencies are most feasible, and the basic importance of the industries to development most obvious. These sectors tend to be those which the Andean Group countries have not developed, and those which are most directly related to their dependence on capitalist countries.

The *Junta* should arrive at a definitive list in consultation with industrialists from that sector and related sectors,<sup>80</sup> and economists and planners who can communicate national concerns as well as project sub-regional needs. An equitable distribution of SPID industries is a touchstone of the process, but may be impossible to guarantee. It must depend on a series of virtual imponderables and courageous value judgments. One participant in the formulation of Decision No. 57 notes that perhaps it would have been best "to elaborate the sectorial programs in one great whole creating an overall industrial development plan for the Subregion,"<sup>81</sup> since trying to balance equities in every SPID may be less proper than balancing them over the industrial sector generally.

It is up to the *Junta* to manipulate and knead the raw interests into a smooth, more or less reconciled package. One potential problem, that of finding a common denominator, has been greatly aided by the institu-

tional framework and harmonizing influence of earlier decisions.<sup>82</sup> Available financing, even the availability and location of individual entrepreneurs, may become keys to shaping a viable plan. In addition, the *Junta* is charged with complementing any SPID with further specific supporting programs and norms wherever necessary to complete the package.<sup>83</sup>

2. *The Catchpool: Programs for Rationalization of Existing Industry.* The most difficult products to work into SPID will be those already manufactured within the Andean Group, the difficulty increasing with each installation. Assigning the right to instigate production is likely to harm no entrenched interest; modification or cessation of an established enterprise does. Where it proves wise, SPID may leave existing plants to Programs for the Rationalization of Existing Industry (PREI), mentioned in the same section of the Cartagena Agreement.<sup>84</sup> Whereas the pact is specific in the outlines of SPID, the only obligation it imposes on the *Junta* with regard to PREI is that it should propose such programs to the Commission at least annually.<sup>85</sup>

The PREI may serve as a nice agent for the resolution of SPID's thorniest problems, by playing off another of the Group's problematical aspects. One of the original adjustments to provide equity was the creation of reserve lists of varying numbers of products which countries might hold back from trade liberalization.<sup>86</sup> Since a country will logically insulate existing industry, the drafters provided that PREI should turn first to those products on the lists of exceptions for the *Junta's* annual proposals.<sup>87</sup> This exercise should force members to a gradual consideration and resolution of competition within the subregion rather than the sudden shock of stripping away protection at the moment common market status is supposed to have been achieved. No reserve list will be permitted to Peru, Chile, Colombia, or Venezuela after 1985 save in "very qualified cases" specifically approved by the *Junta* for a definite period.<sup>88</sup> Bolivia and Ecuador may carry their lists to 1990, then recur to the *Junta*.<sup>89</sup>

3. *Overall Coordination.* There should be a parallel and often intertwining process, then, of rationalizing existing industry, through SPID or PREI, as incipient or potential industry is planned through SPID. The whole effect should be one of evolution, but not drift; of negotiation, but not stalemate. Ideally, later SPID should be easier as the most problematical issues are worked out and complementary support responds to needs revealed by the specifics of each program.

#### IV. THE METALWORKING SECTORIAL PROGRAM

##### A. The Importance of the Metalworking Sector

The Andean Group Commission approved Decision No. 57 in August 1972, establishing the metalworking sector as the first SPID.<sup>90</sup> The planners thus turned first to a sector of fundamental importance to industrial development, and one in which the Andean Group countries lagged most badly. Not only is the sector the principal source of capital goods for industry, but it also involves the technology to design, produce, install, and maintain industrial equipment. Without the "technological infrastructure"<sup>91</sup> provided by a strong metalworking sector, the industrial development of the subregion would be permanently dependent upon imported machinery, repair parts, and technology. Among the usual effects of such a situation are high costs in subregional production and balance of payments drains, which tend to hamper hopes for the expansion of industry.<sup>92</sup>

In 1970, more than half of the subregion's manufactured imports were products from this sector. Import-substitution programs had created national policies of high tariffs and/or prohibition of entry for consumer items but virtually unencumbered imports of capital goods. This may have stifled local development of a sector whose demand should increase from \$2.2 million in 1970 to \$11.5 million in 1985, with attendant economies of scale, if the Andean Group's projections are correct.<sup>93</sup>

##### B. Elements of the Metalworking SPID

1. *Product Determination and Plant Location Through the Assignment Unit.* In formulating its precedent-setting program the *Junta* soon decided to link products and their allocation to individual countries together in assignment units. Two special problems led to the adoption of the assignment-unit approach for metalworking: (1) how to classify products included in the SPID, and (2) what empirical data to use for the equitable distribution of production among the participants.<sup>94</sup> Product specification was difficult because of the complex nature of the metalworking sector, whose diversity made it hard to designate generic groups, at the same time — perversely — physical plant requirements tended to be sufficiently homogeneous that there was little division possible on that basis.

Another problem for the *Junta* was the lack of detailed statistics on which to base assignment of industries to the various countries.<sup>95</sup> It

was essential that assignments be parceled out with utmost regard for equity, although there was some doubt as to what equity meant in practical terms.<sup>96</sup> Apparently the *Junta* opted for a straightforward approach, dividing the product universe into general categories called assignment units and projecting gross production values for each category to 1980. Equitable allocation was then based on a rough division of the projected gross production values,<sup>97</sup> with the onus on each state to object to those aspects of the original proposal it felt were inconsistent with its national concerns.<sup>98</sup> This method probably explains why out of the 128 NABANDINA positions originally reserved to the metal working SPID, only 72 assignment units were ultimately created.<sup>99</sup> Those products which could not be negotiated were either left for inclusion in another SPID or allowed to fall back into the basic liberalization program.

Assignment units correspond roughly to NABANDINA positions. They encompass many products in almost every case, with a very broad technology spectrum for any given assignment unit. Working from such general assignments, a country is expected to select which of the several potential products within each of its designated units it wishes to manufacture. The *Junta*, unable to carry out feasibility studies for each of the thousands of products which might have been included in the SPID's original 128 nomenclature classifications, has put this onus on the member countries, which should come forward within two years<sup>100</sup> (three in the case of Bolivia and Ecuador)<sup>101</sup> with feasibility studies and detailed data on those products it wishes to produce. Production is to begin within three years after the delivery of the feasibility studies.<sup>102</sup>

2. *Country Packages.* The method of assignment units means that each country has a broad range of potential subregional monopolies in those assignment units allocated exclusively. Only 45 of the assignments are exclusive, however, with many divided between two countries and two units assigned among Chile, Peru, and Colombia equally.<sup>103</sup> In case of multiple assignment, there is apparently some premium on priority in time of submission or existing installations. The basic hope is to create blocs of specialization and technology development for each country, and overall the subregion, through effective response to the assignments. Therefore, the planners paid some attention to special interests and capabilities of each country, although they appeared to believe that "technological superiority derives more from economies of scale than from advantages of location."<sup>104</sup> Applying this principle, it becomes important to allocate assignment units equitably so that each country starts with "a germ of development which will grow to comparative advantage over time."<sup>105</sup>

- a. Bolivia, with an extensive mining sector, was assigned units including mining machinery: crushers, drill bits, air compressors, for example. Bolivia should also participate in electrical equipment and basic machinery, with specialization hoped for in smelting, forging, and production of molds and dies. Bolivia has nine exclusive units and shares one.
- b. Chile, which probably has the best balanced metalworking sector of the Group, is the only country to receive assignment units in each of the seven major headings for the sector.<sup>106</sup> Greatest emphasis should fall on electrical machinery and consumer durables and capital goods for their mass production. Chile has the fewest exclusive assignments, six of a total of twenty-two units.
- c. Colombia, another relatively more developed country in this sector, also enjoys assignments diversified throughout various product groupings. Colombia should be able to establish all of the basic technologies within the metalworking sector, with its diversification also fostering service industries. Specialization should occur in agricultural machinery, aeronautical and food processing equipment, and toys. Colombia shares fourteen of its twenty-three assignment units.
- d. Ecuador, like Bolivia, has almost no extant metalworking sector. The *Junta* allocated Ecuador a package of assignment units which should permit development of light metalworking products, measuring tools, electronic controls, clocks and hydraulic machinery. Again like Bolivia, Ecuador shares only one of its assignment units, ten being exclusive.
- e. Peru has concentrated in mining, fishing, agriculture and the processing of raw materials from those areas. With fair development and broad diversification, Peru received the most assignment units, twenty-five, of which it shares fourteen. Specialization should occur in electro-mechanical products like transformers and generators, mining tools and equipment, hoists, thermostats, and tooling machinery.

It is of course virtually impossible to evaluate the *Junta's* handling of assignment packages. Figure I demonstrates that they give Bolivia and Ecuador a smaller share in absolute terms, both in number of units assigned and their projected value, and in terms of projected value break



Chile and Colombia out slightly ahead of Peru. In rough calculation Bolivia and Ecuador each get one-eighth of the projected-value pie, and Chile, Peru, and Colombia one-quarter each. However, there is such a chaos of considerations and imponderables beyond the simple product values that no such superficial judgment is permissible.<sup>107</sup> Much, if not all, will depend on the evolution and development of SPID through individual countries' responses, encouraged and paced by the Junta and the rest of the institutional framework.

FIGURE I

	<u>Bolivia</u>	<u>Chile</u>	<u>Colombia</u>	<u>Ecuador</u>	<u>Peru</u>	<u>Total</u>
Total Units						
Assigned	10	22	23	11	25	72*
Units Assigned						
Exclusively	9	6	9	10	11	45
Projected Value of Production Assigned (millions of dollars)	34.2	71.6	73.5	37.2	67.9	284.3

\*Shared assignments account for this figure. But see note 99 *supra*.

Source: Avila, *Programación de la Industria Metalmeccánica en el Acuerdo de Cartagena*, *Revista de la Integración* No. 13 at 193, 210 Fig. 4 (1973).

3. *Trade Liberalization.* Although the heart of any SPID is the assignment of industries to participant countries and the division of potential benefits thus accomplished, it is the accompanying adjustments in tariff schedules that effectively guarantee access to an extended sub-regional market protected from external competition. We have referred to the effective subregional monopoly created by SPID assignments, but there is no prohibition against production of assigned items outside the favored country. The monopoly is not on production but on the tariff advantages within the subregional structure.

Since 20 September 1972, thirty days after Decision No. 57 entered into force, no Andean country may charge any tariff on metalworking SPID products manufactured under the aegis of an assignment unit.<sup>108</sup>

Lest the measure be evaded by non-tariff restrictions or exotic calculation schemes, the SPID commands that all restrictions of "whatever type" be eliminated along with tariffs<sup>109</sup> and that all tariffs be expressed in ad valorem terms.<sup>110</sup> In order to create a preferential margin for the country favored with an assignment, all Andean Group countries maintain existing tariffs on the same product manufactured by any other member, with the limitation that such tariffs may not exceed the level of those established by Decision No. 57 as common outer tariffs for metalworking products.<sup>111</sup>

Subregional tariff advantages are not permanent. When Bolivia or Ecuador is the country favored with an assignment unit under the metalworking SPID, it may maintain its existing intra-zonal tariff structures (up to the level of the common outer tariff) until 31 December 1985 to handicap the same items produced in other member countries.<sup>112</sup> All other metal working products should move duty-free within the Andean Group after 31 December 1980.<sup>113</sup> Thus, by 1981 on most Decision-57 items and by 1986 for all under the SPID, a subregional common market should have opened to an expanding and progressive sector. This ultimate prospect should generate healthy pressures on any inefficient operation relying for its viability on the margin of preference created by the tariff advantage.<sup>114</sup>

Essentially, the program permits continued discrepancies between national tariff schedules, subject to the harmonizing effect of the common outer tariff only as an upper limit, until all tariffs are finally removed. For products falling within units assigned to two or three countries, the management of preferences requires a bit more harmony. All countries with the right to produce within the unit must first drop their tariffs to that of the lowest duty imposed by any of them for the product in question.<sup>115</sup> Then, after production of the assigned items begins, tariffs will be eliminated among the favored countries in three years, in steps of 40%, 30%, and 30%.<sup>116</sup> Throughout the process, of course, assignment-unit products from any of the countries enjoy free entry into non-favored Andean Group member countries and all six countries maintain existing tariffs against the same items produced within the subregion without benefit of assignment.

The countries participating in an assignment unit may agree among themselves upon a more rapid elimination of tariffs than that specified in Decision No. 57. When each wishes to specialize in a different product line within the single assignment unit — not an unlikely possibility — they may jointly petition the *Junta* to propose a special program of

liberalization.<sup>117</sup> Presumably such petition would ask for distinction of each product so that it would enjoy unique margins of preference in sub-regional trade until 1981 or 1986.

4. *Common External Tariff.* Consistent with the tailored approach to development in each sector which is the hallmark of the SPID, Decision No. 57 establishes specific common outer tariff levels for each product covered by the assignment units. The special tariffs are detailed in Annex V to the Decision.<sup>118</sup> Since circumstances vary from one product to another,<sup>119</sup> the Metalworking SPID's special outer tariffs vary between 40% and 80%, with an average of 56.5% for all products included. In the phrase of Dr. Javier Silva Ruete, the common outer tariff "serves as a reference point from which to measure the efficiency of new production,"<sup>120</sup> and Decision No. 57 contemplates the steady reduction of its levels in a manner which will "reconcile the necessity of stimulating maximum subregional efficiency with adequate protection."<sup>121</sup> If the ultimate goal is competition in the world market, the final level of the common outer tariff for metalworking items should be quite low, at least in a significant number of cases.

The common outer tariff applies to all products either originating outside of or not proceeding from member countries.<sup>122</sup> Rates are set not only for products actually produced within the Andean Group, but also for their assembly parts as well as for substitute or competitive items.<sup>123</sup> The Annex V tariffs are not immediately applicable, entering into effect once the *Junta* has verified the existing production of assigned items under the SPID, or on the 31st of December preceding the start-up date projected by feasibility studies approved in the *Junta*.<sup>124</sup> Since its initial purpose is protective, all countries with lower rates must raise their tariffs up to the common level. However, countries with higher rates may maintain them through 1976, after which they must reduce them to coincide with the common external tariff by the end of 1980,<sup>125</sup> as the common tariff level begins its trend downward, to force increasing efficiency by exposing subregional SPID items to extra-Andean competition.<sup>126</sup>

Mauricio Guerrero, of the *Junta's* legal staff, points out that the scheme established by the Metalworking SPID is more restrictive than the general program for a common outer tariff instituted by the Cartagena Agreement.<sup>127</sup> The latter would permit variation in tariffs by any country so long as actual production had not begun within the subregion under its integration program.<sup>128</sup> Even after the initiation of production, the *Junta* would normally be empowered to propose relaxation of the common

outer tariff along with any other measures it might feel were "necessary to reconcile the necessity of protecting subregional production with that of assuring normal supplies."<sup>129</sup>

The decision to drop individual countries' freedom to deviate from the common outer tariff for the Metalworking SPID apparently was made out of fear that such liberties might be abused to "permit stockpiling in other member countries which could prejudice the subregional producer in its most critical period, that of the initiation of activities."<sup>130</sup> Individual countries may still petition the *Junta* to propose to the Commission that the common barrier be lowered to ease "transitory insufficiencies of supply" in the petitioning country,<sup>131</sup> but that is a far cry and several procedural steps from unilateral freedom to vary protective margins until the moment production starts.

The *Junta* is charged, under the Metalworking program as in general, with overall vigilance of the effects of any common outer tariff. Under the terms of the *Acuerdo de Cartagena*, unaffected by any provision in Decision No. 57, the *Junta* may propose to the Commission at any time those adjustments it feels are necessary to respond: a) to the "exigencies of the subregion, b) to the special situation of Bolivia and Ecuador, and c) to the common outer tariff eventually fixed by LAFTA."<sup>132</sup> Presumably none of those possible concerns should affect the first SPID in the near future.

5. *Complementary Measures.* In virtually every SPID, as contemplated in the Cartagena Agreement, it will be necessary to include so-called complementary measures to assure that the basic program objectives will not be thwarted by indirect actions of any participant country.<sup>133</sup> The complementary measures created under Decision No. 57 are not extensive. Primary among them is a strict proscription against the official encouragement of either the installation or expansion of metalworking enterprises save in those countries to which the particular item involved is assigned under the SPID. The prohibition is not categorical, for states are not bound to prevent such investments; instead they must refrain from applying any of the standard means of fomenting industrial development—state aid or participation, credit preferences, and tax, exchange or tariff benefits—in their favor. Existing programs or official obligations are not affected by the provision, which operates only prospectively.<sup>134</sup>

Wary of potential state action by individual member countries which might subvert the evolution of a successful subregional metalworking

sector, Decision No. 57 is downright xenophobic regarding direct foreign investment which might try to gain entry into any single country. Of course any investment under such an arrangement could not participate in the benefits or programs of subregional integration, but it might seriously hamper the subregional industry's access to a given national market, as has apparently occurred in the Central American Common Market.<sup>135</sup> The Metalworking SPID includes a categorical duty not to authorize direct foreign investment in any of the respective national territories which would entail any production of items assigned to other countries.<sup>136</sup>

The complementary measures do not provide a permanent buffer against the creation of national competition for subregional metalworking enterprises, in either the case of the prohibition against official encouragement of national investment or in that against the authorization of direct foreign investment for a specific nation. For those products falling into an assignment unit designated to Chile, Colombia, or Peru, the advantage obtains through the end of 1982.<sup>137</sup> For those designated to either Bolivia or Ecuador, this particular complementary measure is valid through 31 December 1987.<sup>138</sup> The philosophy of the drafters here, as in other provisions throughout Decision No. 57, is to assure a salutary head start to the incipient subregional industry, but not a permanent prop on which a flabby, inefficient sector might ultimately lean.<sup>139</sup>

Since it is a shibboleth of the Andean Group's program that it wishes to develop export capability in its industrial sector, it is not surprising that the complementary measures of the SPID under discussion here should devote attention to that subject. Any country favored with an exclusive assignment may continue to use any and all direct methods for encouraging exports of the product in question, be it to Andean Group or third countries.<sup>140</sup> Presumably, the result of national export incentives within the Andean Group should be decreased costs to the importing member, with short run benefits to immediate consumers and the country's balance of payments. In the long run, as the market power of the subregion grows with increased sales, there is a collective benefit.

If the case of exclusive assignments appears easy, however, that of shared assignment units is more difficult, since untrammelled use of export incentives could skew natural competition factors and have a negative effect on the ultimate efficiency and resource allocation of the subregion. In case of multiple assignment, the SPID provides that direct incentives for exports may be utilized only for extra-zonal transactions,

unless the several participants within the assignment unit are able to agree upon their use within the subregion as well.<sup>141</sup>

There are several other complementary measures, but none are of great importance. One reiterates what the Cartagena Agreement already makes explicit: no safeguard clauses may be applied against products manufactured under the auspices of the SPID.<sup>142</sup> There are references to co-ordination between Decision No. 57 and Decisions No. 46 on *Andean Corporations* and No. 49 on *Harmonization of Industrial Incentives*.<sup>143</sup> A Metalworking Committee is created, composed of technical representatives to be named from each member country, which will advise the *Junta* on its administration of the evolving pioneer program.<sup>144</sup>

Any products assigned by the Metalworking SPID which may have been included on the lists of exceptions to trade liberalization submitted by the member countries must be taken off such lists.<sup>145</sup> And there is a reference to technical norms, ceding control to the "competent organism" of each country, which has been superseded by the recent promulgation of Decision No. 84 establishing technical norms for the subregion.<sup>146</sup> None of these measures introduces a jarring note. All are predictable and consistent with the main objectives and means which course throughout Decision No. 57.

6. *Venezuela's Participation.* Venezuela joined the Andean Group after the approval of Decision No. 57 and its late entry has created some problems for the Metalworking SPID. Under Decision No. 70, which confirmed Venezuela's inclusion in the Andean Group, the *Junta* is charged with preparing a plan for the new member's participation in the SPID within six months after Venezuela deposits its adherence with the *Commission*.<sup>147</sup> Such a plan may have to increase the number of assigned products by finding some that are uniquely suited to production in Venezuela, for Decision No. 70 was rather protective of acquired rights in the Metalworking SPID. Unless one of the original five agrees to cede some of its rights, the "efficacy" of the initial assignment units may not be affected.<sup>148</sup> In addition, Venezuela is to "endeavor not to encourage" the production within its territory of any items already assigned under Decision No. 57.<sup>149</sup> One way of resolving the problem is suggested by another article, which provides that so long as no plan is approved for Venezuela's participation in the Metalworking SPID, the Venezuelan market will not be opened under its auspices to metalworking products from the rest of the subregion, nor will the subregion be opened to such items originating in Venezuela.<sup>150</sup>

Venezuela does represent a special economic case within the Andean Group. The wealth derived from its natural resources has given it a stable currency and a higher per capita income. Among other things, these circumstances indicate a significantly higher cost structure than exists in other member countries, which tend to be fairly homogeneous. This unfavorable disparity has led to expressions of pessimism by those who fear that entry into the Andean Group will permit a flood of cheap, poor-quality goods into the Venezuelan national market from sources protected by the common outer tariff and benefitted by increasingly liberalized subregional trade. Venezuela, in this view, derives almost nothing from adherence to the Andean Pact, since it does not need and will not derive much advantage from the subregional market.

This negative view of Venezuela's participation in the Andean Group is unreasonably short-sighted. If the Metalworking SPID — with or without Venezuela's participation — and the other SPID which follow it result in efficient industries which can compete worldwide, then Venezuela will not be harmed by diverting its trade to the subregion. Quality and price of Andean products should ultimately prove at least acceptable by comparison with current sources, and Venezuela's overall development and economic strength should be appreciably advanced by its stake in the increasingly powerful subregional industrial sector. Again, of course, the country must pin its development hopes on integration. Perhaps Venezuela has more to lose from an unsuccessful integration effort in the short run than other member countries. Venezuela may also have more to gain from successful integration, since the current bases for its economic strength might stand it in good stead in any final conformation of the subregion.

## V. CONCLUSION

We stress that Decision No. 57 and the other SPID which will follow it represent the culmination of the Andean Group as an integration effort. Each distinct sector presents a different and difficult traverse for the *Junta* insofar as the all-important equitable assignment of industries is concerned,<sup>151</sup> but the Metalworking decision has clarified many basic issues and techniques and will serve as an excellent model as other SPID are drafted. It is disquieting that no further SPID have been promulgated to date, but this does not indicate that no work is being done or that prospects are entirely dim. It does indicate that integration timetables — despite the fact that the Andean Group in its first few years has had an

exceptional record of hitting deadlines — are normally at the mercy of such a plethora of factors that both successful *and* timely resolution of the competing forces is almost impossible. The Andean Group has apparently opted for success rather than timeliness.

Until the moment that the other SPID take definite substance almost everything in the Andean Group is mystique and conjecture.<sup>152</sup> All that has gone before, save the Metalworking SPID, is simply definitive of the limits and potentialities of the subregional effort, a negotiating framework in which to cast its real task: planned subregional industrial development. The Andean Group can be quite sanguine about deviation from earlier, form-establishing decisions. Dr. Felipe Salazar Santos, then Coordinator of the *Junta*, was asked in 1973 if he were not concerned about apparent deviations within member countries from Decision No. 24 on Foreign Investment and Transfer of Technology. His reply was that evasions and unilateral modifications were almost inevitable, but that the Decision's major importance was to place industry on a solid subregional plane, a purpose achieved within the context of Decision No. 57<sup>153</sup>

Neither Dr. Salazar nor any of the other executives of the Andean Group could be so philosophical about evasions of commitments under the Metalworking SPID, but apparently they have no cause for concern as yet. In August 1974, consistent with the deadline, the three larger member countries submitted their feasibility reports on their projected production under Decision No. 57's assignment units.<sup>154</sup> Many projects are already far beyond the feasibility stage and subregional trade in metalworking products has begun. An example of the positive impact of planned Andean industrial development is the agreement between the Swedish firm of Atlas Copco A.B. and Bolivia, for the installation of an enterprise to produce air compressors and pneumatic drills.<sup>155</sup> Atlas Copco Andina S.A. projects production of \$33 million within ten years, building on a total investment of over \$10 million in the form of a loan from the foreign investor. Rather than equity, Atlas Copco A.B. apparently wants control over the destination of a percentage of the Bolivian-Andean firm's production, which Bolivia was willing to give. The nice interplay between the rules of the game set down by Decision No. 24 and other framework measures and the guarantees of an effective subregional monopoly under Decision No. 57 seems clear. This interplay is probably the sole reason for the investment in Bolivia, and a satisfying vindication of the Andean Group's goals. Hopefully it will be repeated many times over in the next decade.



When he received the first metalworking feasibility studies from member countries' representatives in Lima last August, the present Coordinator of the *Junta*, Dr. Germánico Salgado, said, "This is an unforgettable moment in the world history of economic integration. I do not think that such a transcendent step has ever been taken before, with profound significance for the solidarity [of member states] and their decision to march together in the construction of the future."<sup>156</sup> History will have a final verdict on the Andean Group's bold new thrust at development. The verdict should come in relatively quickly, in a decade or so, but hopes are high.

## NOTES

<sup>1</sup>See generally P. CIEZA DE LEON, *THE INCAS* (1st ed. H. de Onis transl. 1959); S. MOORE, *POWER AND PROPERTY IN INCA PERU* (1958).

<sup>2</sup>[Hereinafter cited as *Acuerdo*], English translation in 8 INT'L. MATERIALS 910 (1969). A complete source for this and other documents relating to the Andean Group was published by its *Junta* under the title *HISTORIA DOCUMENTAL DEL ACUERDO DE CARTAGENA* (n.d.) [hereinafter cited as *HISTORIA DOCUMENTAL*].

The subregional unit is often referred to as the Andean Common Market, ANCOM or ACM in English. However, this term is virtually never used by Latin Americans or those involved with the *Acuerdo*. The more common term is *Grupo Andino*, or Andean Group, and sometimes Andean Pact. In Lima, the headquarters is called the *Acuerdo de Cartagena*. We will favor those terms throughout this article, as we will Cartagena Agreement for the *Acuerdo*.

<sup>3</sup>See *Acuerdo*, *supra* note 2, arts. 110, 114; *HISTORIA DOCUMENTAL*, *supra* note 2, 55-146.

<sup>4</sup>See *Acuerdo*, *supra* note 2, art. 3.

<sup>5</sup>See *id.* arts. 27-30, 45-47, 49-50, 61-64, 74-75, 87, 97.

<sup>6</sup>Venezuela was not an original signatory to the *Acuerdo*, but joined the Andean Group on 13 February 1973 under the Consensus of Lima and Decision No. 70 of that same date. See GRUPO ANDINO, No. 21 (Feb., 1973). This publication is the official monthly newsletter originating in the *Acuerdo's* headquarters in Lima.

<sup>7</sup>The Andean Group's most recent problem was the conflict between the Chilean foreign investment statute and the Andean Group's Decision 24. In an unprecedented move, the five other countries of the Andean Group reached an agreement in support of Decision 24 and asked Chile to change its law in compliance with Decision 24. *Andean Times*, Sept. 27, 1974, at p. 4.

<sup>8</sup>See *Acuerdo*, *supra* note 2, arts. 6-12.

<sup>9</sup>See *id.* arts. 13-18.

<sup>10</sup>*Id.* arts. 7(f), 15(c), 15(d), 15(e).

<sup>11</sup>See *id.* ch. IV, arts. 32-35, 47-48, 53, 65(a), 83, 88, 93-95.

We are here taking a viewpoint distinct from that of the Andean Pact and its official voices, which see Andean integration as a "three-pillared" process. The three pillars would be SPID, liberalization of trade, see *id.* ch. V, arts. 41-60, and harmonization of economic policies, see *id.* ch. III, arts. 25-31. See KUCZYŃSKI &

HUELIN, THE ANDEAN GROUP 4 (1973); Avila, *Programación de la Industria Metal-mecánica en el Acuerdo de Cartagena*, 13 REVISTA DE LA INTEGRACION at 193-96 (1973); GRUPO ANDINO, No. 16 at 1 (Aug. 1972).

<sup>12</sup>In March 1973, the Andean Group *Junta* published a monograph describing the Metalworking SPID in some detail, in both English and Spanish: SECTORAL DEVELOPMENT PROGRAM FOR THE METALWORKING INDUSTRIES. This monograph includes a more extended, probably unedited, version of Avila's article cited in note 11 *supra*, as well as detailed statutory and statistical appendices.

<sup>13</sup>See Inter-American Institute of International Legal Studies, INSTRUMENTS RELATING TO THE ECONOMIC INTEGRATION OF LATIN AMERICA (1968) for a documentary history of both LAFTA and CACM. The same Institute published DERECHO DE LA INTEGRACION LATINOAMERICANA (1969) [hereinafter cited as DERECHO] which is probably the most complete treatise on the subject.

Both LAFTA and CACM are currently in poor condition, with prognosis uncertain. A five-year moratorium was set for LAFTA by the Protocol of Caracas, Resolution 261 of the Contracting Parties, in 6 DERECHO DE LA INTEGRACION at 117 (1970); ALALC, SINTESIS MENSUAL No. 54 at 539 (1969). By mid-1973 plans of action and proposals for a new structuring of LAFTA had been completed and an itinerary established for negotiations during 1974, which will determine the future of LAFTA. See ALALC, SINTESIS MENSUAL No. 102 at 34 (1973).

The CACM collapsed in 1969 and periodic efforts have not yet revived it. See Cable, *The "Football War" and the Central American Common Market*, 45 INT'L AFFAIRS 658 (1969); documents collected in 8 INT'L MATERIALS 1080 (1969). For developments in the CACM subsequent to 1969 see *Report on Latin American Economic Integration*, LAWYER OF THE AMERICAS, Vol. II, III, IV, V and VI (1970-1974).

<sup>14</sup>Treaty of Montevideo, preamble. See *also* art. 32.

<sup>15</sup>See *id.* preamble, arts. 14-17.

<sup>16</sup>*Id.* arts. 4(a), 5, 6, 9, 14(b)(c). Originally, each country was to reduce its overall tariff by 8% annually for intra-LAFTA trade. The Protocol of Caracas reduced this commitment to 2.9% annually. See Protocol of Caracas, art. 6.

<sup>17</sup>*Id.* arts. 4(b), 7-9. The Common List was a source of trouble from the second session in 1967 onward, and is the rock on which LAFTA officially floundered. The second session has never been completed.

<sup>18</sup>*Id.* arts. 15-17.

<sup>19</sup>As early as 1963, at the third annual LAFTA Conference, Resolution 71(III) passed. ALALC, II ESTRUCTURA JURIDICA VIGENTE DE LA ALALC 95 (n.d.) [hereinafter cited as JURIDICA VIGENTE]. It was primarily a policy declaration recognizing that concrete measures were necessary in favor of the "countries of insufficient market," i.e., the middle-weights. At the same conference Resolution 74(III) made some definite commitments in other areas to the "relatively less developed countries," Ecuador and Paraguay, but merely promised to study their industrial problems. *Id.* at 99. By the fourth Conference in 1964, further discussion led to Resolution 100(IV) proposing extensive studies. *Id.* at 141. Nothing further ever resulted in LAFTA to deal with the problem. See MILENKY, THE POLITICS OF REGIONAL ORGANIZATION IN LATIN AMERICA 75-80 (1973).

In many ways, this indicates a real failure of the LAFTA system, which had always been viewed as a *tratado marco*, or framework treaty, which would be perfected by evolution. See the discussion of the concept of *tratado marco* in DERECHO, *supra* note 13, at 842-48; Treaty of Montevideo, art. 61.

<sup>20</sup>GARBAEZ, INDUSTRIAL POLARIZATION UNDER ECONOMIC INTEGRATION IN LATIN AMERICA xiii (1971). See *also* Wionczek, *The Rise and Decline of Latin American Integration*, 9 J. OF COMMON MKT. STUDIES 49 (1970).

<sup>21</sup> All figures from *Twelve Years of Intra-LAFTA Trade, 1961/1972*, ALALC NEWSLETTER No. 18 (June, 1973).

<sup>22</sup>CARNOY, INDUSTRIALIZATION IN A LATIN AMERICAN COMMON MARKET 20 (1972).

<sup>23</sup>SALGADO, ECUADOR Y LA INTEGRACION ECONOMICA DE AMERICA LATINA 14 (1970).

<sup>24</sup>See Resolution 99 (IV) of 8 December 1964, art. 1, in JURIDICA VICENTE, *supra* note 19, at 135; BEHRMAN, THE ROLE OF INTERNATIONAL COMPANIES IN LATIN AMERICAN INTEGRATION at 32-33 (1972); Silva Barros, *Régimen Legal de los Acuerdos de Complementación en la ALALC*, 5 DERECHO DE LA INTEGRACION at 78 (1969); Saphier, Latin American Economic Integration: Mechanisms for the Reduction of Trade Barriers 48-107 (unpublished LL.M. thesis for UCLA, 1971).

<sup>25</sup>For a list of the first sixteen complementation agreements, see MILENKY, THE POLITICS OF REGIONAL ORGANIZATION IN LATIN AMERICA at 250-51 (1973); ALALC, SINTESIS MENSUAL No. 67 at 23-45 (1971). The last four may be found in *id.* No. 80 at 100 (1972); No. 83 at 317 (1972); No. 86 at 489 (1972); No. 92 at 65 (1973).

<sup>26</sup>Resolution 99(IV) superseded Resolutions 48(II), 16(I), 15(I), which had dealt specifically with complementation agreements. JURIDICA VICENTE, *supra* note 19, at 19, 73, 135. Resolution 99(IV) provides that complementation agreements should treat a specific industrial sector and may include products not traded or even produced at the time of their negotiation. Resolution 99(IV), art. 1(b), quoted fully in *id.* at 135. The products covered must be listed with the same nomenclature utilized for the lists, *id.* art. 3(a), and a concrete commitment to a program of elimination of trade barriers is required for each product and each country in every agreement. Resolution 99(IV), arts. 2, 3(b), 6(a). Additionally, the agreement must establish a method for preserving the margins of preference granted to participants against products from third countries. Resolution 99(IV), arts. 3(e), 5(a). Any number of LAFTA parties may join in negotiations for a complementation agreement, Treaty of Montevideo, art. 17, or, after its ratification, in the agreement itself which must include a provision for adhesion of other members. Resolution 99(IV), art. 4. Participants are admonished to harmonize policies and legislation to facilitate the agreements and their goals. Resolution 99(IV), arts. 1(c), 1(d), 5.

<sup>27</sup>See Resolution 99(IV), arts. 1(f), 1(g), 6(b), 6(c), 7, 15, 23.

<sup>28</sup>Lightweights could take advantage of complementation concessions at any time, however. Resolution 99(IV), art. 25.

<sup>29</sup>See Resolution 192 (CM-II/VI-E) of 2 September 1967, in II ESTRUCTURA JURIDICA 292.

<sup>30</sup>Latin American economists view economic integration in their region as an evolving process. Thus, when new integration efforts are being organized such as the Andean Group, experts from CACM, LAFTA, INTAL, and other organizations pool their respective expertise in an attempt to improve upon earlier programs and mechanisms. For example, see The Declaration of the Presidents in 55 DEP'T STATE BULL. 712 (1967).

For a discussion of the development of CACM, see Ereli, *The Central American Common Market: Integration in Practice*, 43 TULANE L. REV. 1 (1968).

<sup>31</sup>The Agreement on the System of Central American Integrated Industries, June 10, 1958 [hereinafter cited as Integrated Industries Agreement] in INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, INSTRUMENTS RELATING TO THE ECONOMIC INTEGRATION OF LATIN AMERICA 89 (1968) [hereinafter cited as INTERNATIONAL LEGAL STUDIES].

The five Central American nations reaffirmed their belief in the integrated industries scheme by incorporating it into the CACM structure in 1963. Protocol

to the Agreement on the System of Central American Integrated Industries, Jan. 29, 1963 [hereinafter cited as Protocol] in INTERNATIONAL LEGAL STUDIES at 94. In the Protocol, the CACM members restated the goals of CACM that were hopefully obtainable through the use of integrated industries: "[E]conomic development . . . and a balanced growth among countries." *Id. Preamble*.

<sup>32</sup>The Transitional Article of the Integrated Industries Agreement, *supra* note 31, states:

In order to promote an equitable distribution of the Central American industrial integrated plants, the contracting States shall not award a second plant to any one country until all of the Central American countries have each been assigned a plant in conformity with the protocols . . . .

<sup>33</sup>Protocol, *supra* note 31, at arts. 3, 6.

<sup>34</sup>*Id.* arts. 4; Integrated Industries Agreement, *supra* note 31, at art. III.

<sup>35</sup>Protocol, *supra* note 31, at art. 3. See text following note 38 *infra*.

<sup>36</sup>The three approved integrated industries include the caustic soda and chlorinated insecticides in Nicaragua, the tire and tube industry in Guatemala, and the plate glass industry in Honduras. Six other industries have been accepted by the Executive Council for their consideration, but none have yet been approved. Resolution No. 68, Executive Council, Central American Common Market.

<sup>37</sup>Cable, *The "Football War" and the Central American Common Market*, 45 INT'L AFFAIRS 658, 664 (1969).

<sup>38</sup>BUSINESS INTERNATIONAL RESEARCH REPORT, THE CENTRAL AMERICAN COMMON MARKET 18 (1969).

<sup>39</sup>*El Grupo Andino: Un Concepto Nuevo en la Integración Económica*, Hackett Memorial Lecture, University of Texas, 5 April 1972, at 11.

<sup>40</sup>See, e.g., MILENKY, *supra* note 19, at 101-04; ORTUNO, BOLIVIA Y LA INTEGRACION ECONOMICA DE AMERICA LATINA 134-35 (1969); SALGADO, *supra* note 23, at 11-16.

<sup>41</sup>BEHRMAN, *supra* note 24, at 27.

<sup>42</sup>The creation of the Andean Group is generally traced from 6 January 1965, when President Frei sent a letter to "The Four" (Prebisch, Mayobre, Herrera, Sanz de Santamaria) asking for concrete suggestions for accelerating the integration process in Latin America. Their reply was published by the Inter-American Development Bank and formed the basis for the 1966 *Declaration of Bogotá*, in which all present Andean Group countries save Bolivia took part, specifically proposing a subregional pact. The proposition was then considered by LAFTA and at other inter-American conferences and meetings until 1969, when the *Acuerdo de Cartagena* was signed. See MAYOBRE, *et al.*, HACIA LA INTEGRACION ACCELERADA DE AMERICA LATINA (1965). This publication includes Frei's letter and the report prepared in response to it. The same events are recounted several places, probably most definitely in DERECHO, *supra* note 13, at 468-530.

<sup>43</sup>The Declaration of 1967 includes integration as its first objective and virtually all of its main action program is aimed at that objective. See 55 DEP'T STATE BULL. 712-17 (1967). Six years before, at the time the Alliance for Progress was initiated, economic integration had been only one of many objectives and most of the implementation had been cast in terms of internal reforms. See 41 DEP'T STATE BULL. 463 (1961). Of course, the meeting of 1967 probably would not have been held but for the concern over LAFTA's course.

<sup>44</sup>This is properly a question of profound philosophical inquiry. See Kozolchyk, *Toward a Theory on Law in Economics*, 1971 LAW & SOC. O. 681; Trubek, *Toward a Social Theory of Law*, 82 YALE L.J. 1 (1972).

We are here not pursuing that inquiry, for it seems quite clear that the Andean Group is committed to the position stated here. See, e.g., *Supplement to COMERCIO EXTERIOR, BASES GENERALES PARA UNA ESTRATEGIA SUBREGIONAL DE DESARROLLO 19-20* (Nov., 1972) [hereinafter cited as *BASES GENERALES*]; Salazar, *Una Visión General del Grupo Andino*. (Lecture presented at the Jornadas Hispano-Andinas, Madrid, 23 May 1973.)

<sup>45</sup>Salgado, *El Grupo Andino y el Poder de la Acción Solidaria* 19, published by Andean Group's Junta (Sept., 1972). See *BASES GENERALES*, *supra* note 44, at 30; Silva Ruete, *La Programación en el Grupo Andino* 2-8 (Lecture presented at the *Jornadas Hispano-Andinas*, Madrid, June, 1973).

<sup>46</sup>See, e.g., BEHRMAN, *supra* note 24, at 5, 12, 31; CARNOY, *supra* note 22, at 68-69.

Colombia is the most populous country, with 22 million inhabitants, but Bolivia has only about 4½ million. The region as a whole includes 67 million people, with a per capita annual income of \$461, ranging from \$195 per year in Bolivia to \$847 in Venezuela. Gross national product totals \$31 billion for the subregion, ranging from Venezuela's \$9 billion to Bolivia's \$900 million. GRUPO ANDINO: ORIGEN, OBJETIVOS, MECANISMOS Y LOCROS (1973).

<sup>47</sup>Most notably CARNOY *supra* note 22; BEHRMAN, *supra* note 24; *BASES GENERALES*, *supra* note 44; Schydrowsky, *Allocating Integration Industries in the Andean Group*, 9 J. COMM. MKT. STUDIES 299 (1971).

<sup>48</sup>One economist, who worked with the studies, notes that their conclusions "were not much different from those which could have been predicted by a less rigorous and elaborate analysis." Avila, *supra* note 11, at 193, 205.

<sup>49</sup>BUSINESS INT'L CORP., *THE ANDEAN COMMON MARKET* 36 (1970).

<sup>50</sup>KUCYZNSKI & HUELIN, *supra* note 11, at 11-12; Avila, *supra* note 11, at 203-10. The latter cite is to an article by an Andean Junta economist who participated directly in drafting of Decision No. 57.

<sup>51</sup>*Acuerdo*, *supra* note 2, art. 47. In 1970, the Commission approved a long list of products reserved to sectorial programs. These were conceived to break down into the following programs: automotive, glass, paper and pulp, pesticides, fertilizers, pharmaceutical, steel, petrochemicals, dyes and fine chemicals. See Decision No. 25 of December 1970, changed to NABANDINA by Decision No. 59 of September 1972. A more specific breakdown of the product classifications covered is set out in Silva Ruete, *supra* note 45, at 11-12.

<sup>52</sup>Approved in Bogotá, 7 February 1968. *HISTORIA DOCUMENTAL*, *supra* note 2, at 375; 8 INT'L LEGAL MATERIALS 940 (1969).

<sup>53</sup>December 1970; in English, 11 INT'L L. MATERIALS 126 (1972).

"See Furnish, 'El Régimen Común del Grupo Andino para las Inversiones Extranjeras,' DERECHO DE LA INTEGRACION No. 14 at 85 (1973); Furnish, 'The Andean Common Market's Common Regime for Foreign Investment,' 5 VAND. J. TRANSNAT'L LAW 313 (1972)."

<sup>54</sup>December 1971; in English, 11 INT'L L. MATERIALS 357 (1972).

<sup>55</sup>November 1971.

<sup>56</sup>August 1972.

<sup>57</sup>Decision No. 57 of December 1970.

<sup>58</sup>Decisions Nos. 28 and 29 of December 1970, No. 34 of March 1971.

<sup>59</sup>See Decisions No. 26 and 27 of December 1970, dealing with products to receive special customs treatment.

<sup>60</sup>See ANDEAN GROUP JUNTA BASES GENERALES PARA UNA ESTRATEGIA SUB-REGIONAL DE DESARROLLO (1972). This is a multi-volume report with extensive data. A synthesis of its policy statement was included as a supplement in both *Comercio Exterior* (Nov. 1972) and GRUPO ANDINO No. 12 (April, 1972)

<sup>61</sup>The recently-enacted foreign technology laws of Argentina and Mexico were patterned after the Andean Group's program. KUCYZNSKI & HUELIN, *supra* note 11, at 32; Tancer & Zanotti, *The Mexican Law of Foreign Real Estate Investment in the Prohibited Zones: An Overview, 1971-73*, Appendix B (Arizona State University Center for Latin American Studies, 1974).

<sup>62</sup>The Andean Group did not include complementation agreements in its program, even though originally they were going to participate in LAFTA's complementation agreements. In Decision No. 8 of March 1970 the Andean Group members decided to stay out of all complementation agreements under the Treaty of Montevideo.

<sup>63</sup>*Acuerdo*, *supra* note 2, art. 34(a). For a more comprehensive treatment of SPID characteristics, see Guerrero, *La Programación del Desarrollo Industrial Sub-regional y El Primer Programa Sectorial de la Industria Metalmeccánica*, 12 DERECHO DE LA INTEGRACION 35 (1973). We disagree with Guerrero's analysis in several places, despite his official position in the Junta's legal section and his undeniable expertise in matters regarding the Andean Group. Most immediately, Guerrero breaks those characteristics necessary to every SPID apart from those which may be desirable in some SPID, but are not vital. We have followed his classification, but include as vital elements two items he would relegate to potential status: special treatment for Bolivia and Ecuador, and a liberalization schedule for the subregion. We cannot think of any SPID which could not include those elements. Dr. Javier Silva Ruete, Executive Secretary to the Junta, in his list of elements to be included in SPID, is more in agreement with the authors. See Silva Ruete, *supra* note 45, at 14.

<sup>64</sup>*Acuerdo*, *supra* note 2, art. 34(c).

<sup>65</sup>*Id.* art. 34(f).

<sup>66</sup>*Id.* art. 34(g).

<sup>67</sup>*Id.* art. 94.

<sup>68</sup>*Id.* art. 34(e).

<sup>69</sup>Guerrero, *supra* note 63, at 36. We here rely on Guerrero for interpretation of a matter not clear in the *Acuerdo*.

<sup>70</sup>*Acuerdo*, *supra* note 2, art. 47. All the products originally reserved by Decision No. 25 were to have been included in the SPID completed before 31 December 1973, extendible to 31 December 1975.

<sup>71</sup>Guerrero, *supra* note 63, at 36, 42-43. Again, Guerrero clarifies a matter left vague in the *Acuerdo*.

<sup>72</sup>*Acuerdo*, *supra* note 2, art. 34(b).

<sup>73</sup>*Id.* art. 34(d).

<sup>74</sup>*Id.* art. 34(e).

<sup>75</sup>*Id.* art. 88.

<sup>76</sup>*Id.* art. 83.

<sup>77</sup>Decision No. 25, *supra* note 51.

<sup>78</sup>Andean Group Junta Program for the Metalworking Industry of the Andean Group's Sectoral Development (brochure).

<sup>79</sup>KUCYZNSKI & HUELIN, *supra* note 11, at 12.

<sup>80</sup>Avila, *supra* note 11, at 212-13.

<sup>81</sup>*Id.* at 208.

<sup>82</sup>See text accompanying notes 52-61.

<sup>83</sup>*Acuerdo*, *supra* note 2, arts. 34, 35.

<sup>84</sup>*Id.* art. 35.

<sup>85</sup>*Id.* art. 36. Although PREI had not been initiated before, in 1974 the *Junta* hoped to begin their elaboration "in sectors like the textile industry and the so-called white-line [of durable appliances]." Silva Ruete, *supra* note 45, at 14.

<sup>86</sup>*Acuerdo*, *supra* note 2, arts. 55, 102.

<sup>87</sup>*Id.* art. 57.

<sup>88</sup>*Id.* art. 55.

<sup>89</sup>*Id.* art. 102.

<sup>90</sup>Decision No. 57, *supra* note 12. The Andean Group has taken pains to publicize the first SPID, ranging from small brochures to rather extensive monographs, with appendices, in Spanish and English. See Andean Group Junta, SECTORAL DEVELOPMENT PROGRAM FOR THE METALWORKING INDUSTRIES [hereafter cited as DEVELOPMENT PROGRAM].

<sup>91</sup>The phrase is from Decision No. 57, art. 1, repeated by Galo Montaña, *El Programa Metalmeccánico del Grupo Andino* 11 (Lecture presented at the *Jornadas Hispano-Andinas*, June 1973).

<sup>92</sup>See discussions of the importance of the metalworking sector in Avila, *supra* note 11, at 199-201; Galo Montaña, *supra* note 91, at 7-11; DEVELOPMENT PROGRAM, *supra* note 90, at 5-9, 11-13.

<sup>93</sup>DEVELOPMENT PROGRAM, *supra* note 90, at 8-9.

<sup>94</sup>Avila, *supra* note 11, at 204; Galo Montaña, *supra* note 91, at 12-14.

<sup>95</sup>But see notes 47 and 48 *supra*. For example, Schydowsky's article, cited *supra* note 47, might have been an excellent model for equitable distribution, but suggests a system that depends on reliable determination of foreign exchange saved or generated by a particular assignment, the marginal social cost of internal resources to be used, and the marginal utility of foreign exchange. Schydowsky himself notes the lack of data sufficient to carry out the sort of analysis he posits. His alternative method, the assignment of a few projects at a time instead of the whole sector, is rejected by Avila—and apparently the Junta—as politically unacceptable. Avila, *supra* note 11, at 206 n.9.

<sup>96</sup>*Id.* at 209.

<sup>97</sup>Galo Montaña, *supra* note 91, at 13-16; DEVELOPMENT PROGRAM, *supra* note 90, at 30.

<sup>98</sup>This was accomplished by a series of bilateral conferences between the *Junta* and each participant. See Avila, *supra* note 11, at 209-10.

<sup>99</sup>Although a mathematical approach would break down 45 unique assignments, 20 double assignments, and two triple assignments to a simple total of 67 assignment units, a count of the units set out in an Appendix of DEVELOPMENT PROGRAM reveals 72 in all. The authors are at a loss to explain the apparent discrepancy.

Galo Montaña twice mentions that there are 91 assignment units in the first SPID. *Supra* note 91, at 14, 19. Despite the authority of the source, he appears mistaken.

<sup>100</sup>Decision No. 57, art. 5.

<sup>101</sup>*Id.* art. 6.

<sup>102</sup>*Id.* arts. 5-6. If proper studies are not carried out and/or production is not begun within the proper time limits, the products thus ignored fall back into the Andean Pact's automatic liberalization program. *Id.* art. 8.

<sup>103</sup>See DEVELOPMENT PROGRAM, *supra* note 90, Appendix II, 29-50, for a specific breakdown of each country, its assigned units, and those it shares.

<sup>104</sup>Avila, *supra* note 11, at 207, citing Kitamura, *La Teoría Económica y la Integración Económica de las Regiones Subdesarrolladas*, in Wionczek (ed.), *INTEGRACION DE AMERICA LATINA, EXPERIENCIAS Y PERSPECTIVAS* (1964).

<sup>105</sup>*Id.* at 206. Article 1 of Decision No. 57 is also rather illustrative:

The Member Countries commit themselves to carry out this program in the spirit of Article 32 of the Cartagena Agreement, with the principal objective of promoting the development of an efficient metal working industry in their territories, by means of instigation and consolidation of the basic technological infrastructure necessary for such an effect. This development should create bases so that all countries may strengthen the structure of their industrial sectors, improve their capacity to adapt and generate technology, and create possibilities for specialization by planning subregional and world commerce.

<sup>106</sup>The major divisions of the metalworking sector are: specific machinery, basic machinery, machine tools, electrical equipment, transportation equipment, tools and other instruments, and consumer goods and appliances.

<sup>107</sup>It is difficult to determine exactly how the drafters of Decision No. 57 measured the "gross production value" among the participant countries. Per capita income, GNP, or projected population seem to be the basis for the projection and its division.

<sup>108</sup>Decision No. 57, art. 10.

<sup>109</sup>*Id.* art. 14.

<sup>110</sup>*Id.* art. 15.

<sup>111</sup>*Id.* arts. 10, 13.

<sup>112</sup>*Id.* art. 11.

<sup>113</sup>*Id.* art. 10.

<sup>114</sup>This may have been patterned after the CACM's approach. See notes 33 and 35 *supra* and accompanying text.

<sup>115</sup>Decision No. 57, art. 12, a).

<sup>116</sup>*Id.* art. 12, b).

<sup>117</sup>*Id.* art. 12, c).

<sup>118</sup>*Id.* art. 16.

<sup>119</sup>Avila and Silva Ruete list the circumstances to be taken into account as follows:

1. degree of product elaboration
2. technological complexity of the process
3. employment provided to the working force
4. economics of scale
5. existence of subregional production



6. degree of integration

7. preferential treatment for Bolivia and Ecuador

Avila, *supra* note 11, at 221-22; Silva Ruete, *supra* note 45, at 18.

As Avila points out in his Table 10, the common outer tariff will represent an increase on most products for the member countries, save in Chile where the average pre-SPID tariff on assigned products was 82.6%. All other countries had an average tariff under 50%, with Bolivia's being only 30.7%.

<sup>120</sup>Silva Ruete, *supra* note 45, at 18. The *Andean Times* called it "the allowable level of inefficiency." See issue of 22 March 1974 at 4-5.

<sup>121</sup>Decision No. 57, art. 23.

<sup>122</sup>*Id.* art. 16.

<sup>123</sup>*Id.* arts. 17, 19.

<sup>124</sup>*Id.* arts. 17, 18.

<sup>125</sup>*Id.* art. 21.

<sup>126</sup>*Id.* art. 20.

<sup>127</sup>Guerrero, *supra* note 63, at 45.

<sup>128</sup>*Acuerdo*, *supra* note 2, art. 65.

<sup>129</sup>*Id.*

<sup>130</sup>Guerrero, *supra* note 63, at 45. Decision No. 57, art. 22, is categorical in its prohibition against not only unilateral deviation from the common outer tariff itself, but also against "any special treatment which might modify" its impact.

<sup>131</sup>*Acuerdo*, *supra* note 2, art. 67. This is of course the same basic measure as that provided in *Acuerdo*, art. 65, *supra* note 128 and accompanying text, but shifts the burden of initiative onto the individual state.

<sup>132</sup>*Acuerdo*, *supra* note 2, art. 66.

<sup>133</sup>See *supra* notes 72-76 and accompanying text.

<sup>134</sup>Decision No. 57, art. 24. The provision includes, in addition to the enumerated incentives to industrial investment, a dragnet clause against "measures of any nature which might divert the objectives pursued."

<sup>135</sup>See text following note 38 *supra*.

<sup>136</sup>Decision No. 57, art. 25. Presumably the term "direct foreign investment" as used here is that defined in Decision No. 24, art. 1, as:

Contributions, coming from abroad and belonging to foreign individuals or enterprises, made to the capital of an enterprise, in freely convertible currency, industrial plants, machinery, or equipment, and having the right to re-exportation of their value and the transfer of profits abroad.

Likewise, investments in local currency from funds which are entitled to be transferred abroad shall be considered to be foreign investments. Decision No. 24, art. 1, found in 11 INT'L L. MATERIALS 128 (1972).

<sup>137</sup>Decision No. 57, art. 26.

<sup>138</sup>*Id.*

<sup>139</sup>We make this point despite the fact that Maurice Guerrero and the Cartagena Agreement may stand against us. Perhaps a strictly legal construction should have commanded permanent effect for article 24 and 25. See Guerrero, *supra* note 63, at 46-47. Regardless, the economic criteria of the drafters in placing a time limit on the prohibitions of art. 24 and 25 seem to us quite correct.

<sup>140</sup>Decision No. 57, art. 27, a). See *Acuerdo*, *supra* note 2, art. 30; Decision No. 29 of Dec. 1971, arts. 28-30.

<sup>141</sup>*Id.* art. 27, b).

<sup>142</sup>*Id.* art. 29; *Acuerdo*, *supra* note 2, art. 81.

<sup>143</sup>Decision No. 57, arts. 34, 33. See Guerrero, *supra* note 63, at 48, 50-51.

<sup>144</sup>Decision No. 57, art. 32.

<sup>145</sup>Decision No. 57, art. 31. See notes 86-87 *supra* and accompanying text for a discussion of the lists of exceptions.

<sup>146</sup>Decision No. 57, art. 30. Decision No. 84, *Bases Para una Política Tecnológica Subregional*, was promulgated by the Commission at its Extraordinary Session in June 1974. It appears as an appendix to *Grupo Andino*, No. 36 (June, 1974).

<sup>147</sup>Decision No. 70 of February 1973, art. 27. Interestingly, the article also specifies that the plan may be approved by a two-thirds vote of the six-member Commission, and no negative vote, consistent with *Acuerdo*, *supra* note 2, art. 11, b).

<sup>148</sup>Decision No. 70, art. 28.

<sup>149</sup>*Id.* art. 29.

<sup>150</sup>*Id.* art. 30.

<sup>151</sup>For the difficulties in negotiating the automotive and petrochemical SPID, the next two priorities for the Junta, see *Andean Times* of 17 May 1974 at 8-9 (automotive), of 24 May 1974 at 7-9 (petrochemicals), of 19 April 1974 at 7-8 (automotive and petrochemicals), and of 26 April 1974 at 12 (automotive).

<sup>152</sup>The authors owe the words "mystique and conjecture" to Dr. Felix Peña of INTAL, who used them in a conversation with Professor Furnish in May, 1973.

<sup>153</sup>See Proceedings, ABA Institute on Latin American Law, New York, May 3-4, 1973.

<sup>154</sup>See *Grupo Andino*, No. 38, at 3-5 (August, 1974). As this issue points out, some feasibility studies were not submitted on time but are forthcoming under time extensions.

<sup>155</sup>The Atlas Copco Andino agreement is described in *Grupo Andino*, No. 31 (January, 1974), No. 33 (March, 1974), and No. 38 (August, 1974). The *Andean Times* of 8 March 1974, at 3-4, also has an evaluation of the project.

<sup>156</sup>Quoted in *Grupo Andino*, No. 38, at 5 (August, 1974).