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Gabriela Mancero-Bucheli

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Intellectual Property and Rules on Free Movement: A Contradiction in the Andean Community (ANCOM)

Gabriela Mancero-Bucheli *

I. Introduction.

The free movement of goods within the Andean Community (AC) poses particular problems for the Community. These problems arise primarily from the differing approaches within the Member States to the regulation of cross-border trade, the implementation of AC law, the role played by the supranational institutions, and the need to strike a balance between the free movement of goods and the protection of proprietary rights. A recent ruling by the Andean Court of Justice of the Andean Community, the so-called *Belmont* case,¹ raises doubts as to whether the existing community legal body for the protection of intellectual property rights, Decision 344, is helpful enough in the understanding of the circumstances under which intellectual property rights can be a valid obstacle to the free movement of goods. The purpose of this paper is to explore the reasoning of the Court and to determine the practical consequences of the judgment.

The first section will explain the legal framework of a non-compliance action, on the basis of which the Andean Court of Justice's ruling was issued. Section II will discuss the decision of the Andean Court of Justice and its legal and practical implications in the Andean Community.

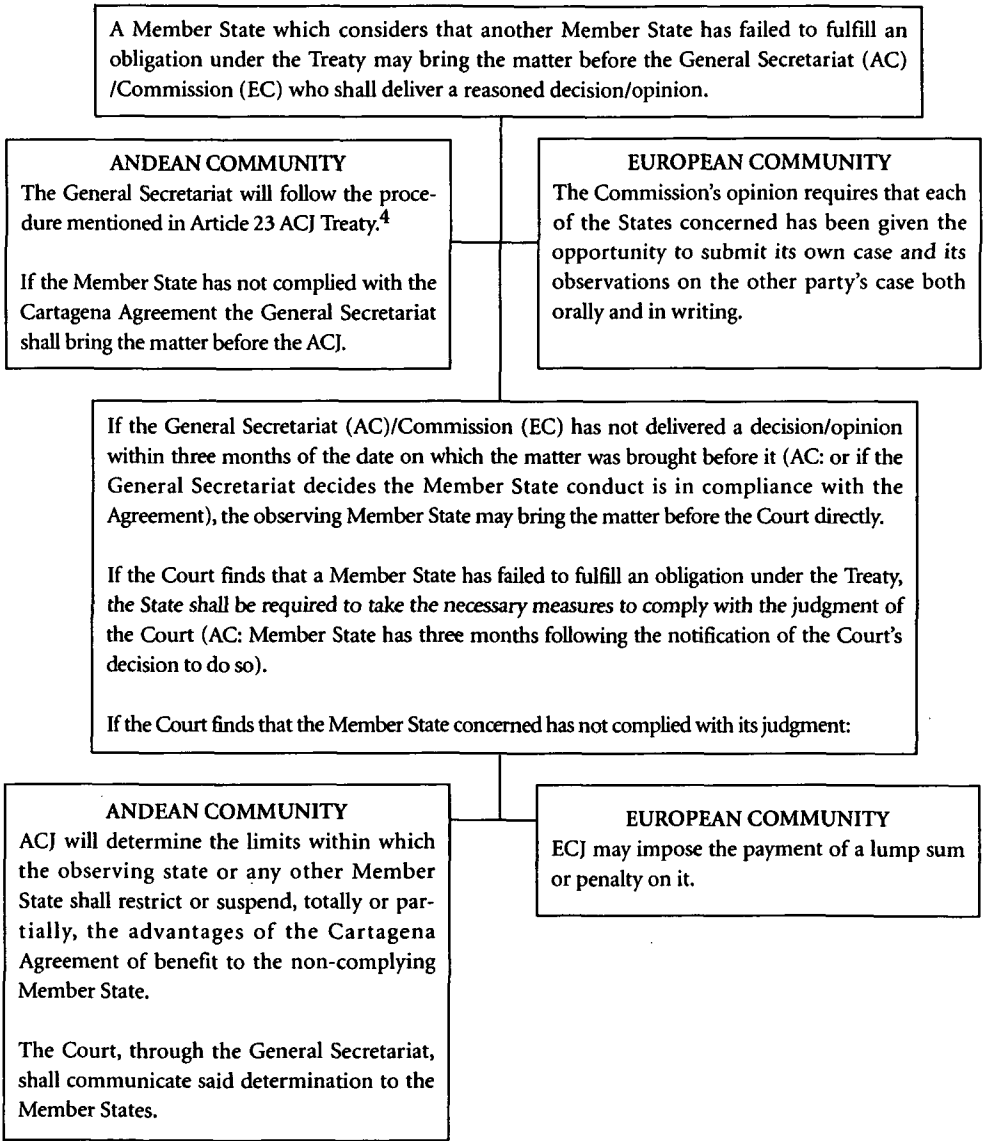
II. Non-Compliance Actions Under AC Law.

Clearly inspired by the Treaty of Rome (EC Treaty), the procedure established for non-compliance actions under the Andean Court of Justice Treaty² highly resembles that of Articles 170 and 171 of the EC Treaty (Table 1).

From a simple reading of the wording of both texts, it appears that the wording of Article 171 of the EC Treaty provides a more effective and simple sanction for the non-complying Member State.³ The power left to the Andean Court of Justice to determine the

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1. Process 2-AI-96, Judgment of June 20, 1997 [hereinafter Judgment].
 2. Treaty Creating the Court of Justice of the Cartagena Agreement, May 28, 1979, 18 I.L.M. 1203 (entered into force May 19, 1983).
 3. For a detailed discussion of non-compliance actions under EC law see: Joseph Weiler, *The Community System: Dual Character of Supranationalism*, 1981 YEL 267, at 299; R. White and A. Dashwood, *Enforcement Actions under Articles 169 and 170 EEC*, 1989, 14 ELRev 388, at 389.
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Table 1. Non-Compliance Actions By A Member State
(Articles 170-71 ECT And 24-25 ACJ Treaty)



4. "Art. 23. - When the General Secretariat considers that a member state has failed to fulfill an obligation under the Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. The member state concerned has to reply within a maximum period of two months. If the General Secretariat decides the member state has not complied and the member state continues to carry on the conduct subject to observations, the General Secretariat may bring the matter before the ACJ."

restriction or suspension of Treaty advantages to the non-complying Member States has further negative implications than those expected because it would also involve sanctioning the citizens of the Member State, who are supposed to be the real beneficiaries of the community legal order. Such a sanction, resulting in differing application of AC law among Member States, would hinder the homogeneity and legal certainty of community law and would be discriminatory.

In EC law, an important element in furthering the effectiveness of the EC Treaty has been the European Court of Justice's (ECJ) ability to exercise the power vested by Article 186 EC Treaty whereby "[t]he Court of Justice may in any cases before it prescribe any necessary interim measures."⁵ Even though the ECJ has imposed strict conditions on itself for the application of these measures, it has indeed made orders against defaulting States. This was the case, for example, in *Commission v. United Kingdom (Factortame)*⁶ where, pending delivery of the judgment in the main proceedings, the ECJ ordered the United Kingdom to suspend the application of the infringing sections of the Merchant Shipping Act of 1988 regarding nationality requirements for registering and obtaining fishing vessels under the British flag.

Actions for non-compliance have almost never been filed before the Andean Court of Justice,⁷ the reason not being that Member States are faithful applicants of AC law. On the contrary, this is due particularly to the fact that the volume of failures to fulfill treaty obligations has been so high among Member States, especially during the decade of the 1980s, that governments decided and agreed not to file non-compliance actions before the Court. This was then known as the "agreed impunity."⁸ Therefore, the recent judgment of the Andean Court of Justice is particularly relevant because it seems to be part of a new trend under AC law whereby Member States are beginning to apply the community's legal mechanisms to ensure the application of AC law.

III. The *Belmont* Case.

A. THE FACTS BEHIND THE CASE.

BAT Industries subsidiary, Cigarrera Bigott (hereinafter BAT), is the owner of trademark "Belmont" for tobacco and tobacco products in Venezuela since March 18, 1963. In the same year, BAT obtained a similar registration in Ecuador. In 1977, an Ecuadorian subsidiary of Philip Morris (hereinafter PM) won an action for annulment of the Ecuadorian registration of trademark Belmont and registered Belmont under their own name. However, the annulment decision that originated PM's right to own the mark was not duly registered before the Ecuadorian IP Office (EIPO), a pre-requisite under Ecuadorian law for a decision to have legal effects. In 1994, BAT started selling its products under trademark Belmont into Ecuador on the grounds of Article 107, paragraph 3 of Decision 344.

5. Treaty Establishing the European Community, Feb. 7, 1992, art. 186, 1992 O.J. C 224.

6. Case 246/89, *Commission v. United Kingdom*, 1989 E.C.R. 3125, 3 C.M.L.R. 601 (1989).

7. None were filed during the period 1984-1992.

8. Cárdenas Manuel José, *Implicaciones del regionalismo abierto en el ordenamiento jurídico del Acuerdo de Cartagena*, Vol. 205:19 INTAL 5, Buenos Aires (1994).

Furthermore, BAT obtained a declaration from the EIPO stating that trademark Belmont in Ecuador was still under the name of BAT. PM had previously only used their mark to sell for export to countries where BAT owned the mark, but for more than thirty years, PM did not use it in the Ecuadorian market.

In 1994, PM brought several actions before administrative authorities in Ecuador (*i.e.* Ecuadorian Duties Office, Ministry of Industries, EIPO, Central Bank) to impede the imports of BAT's Belmont products. PM also sought and obtained several declarations stating that the imports of BAT's products under trademark Belmont to Ecuador were prohibited. On the other hand, BAT obtained several declarations by similar administrative authorities and by a first instance criminal judge stating that PM was not validly using their trademark Belmont in the sense required by the Andean law. By the time BAT obtained the said declarations (1994), PM had already begun to produce Belmont products for local use and was selling them in the Ecuadorian market. Finally, the Ecuadorian Government initiated an aggressive campaign through the media, advising the public that the Venezuelan product was not being legally introduced to the country and, therefore, any trade in that product would be considered a crime and sanctioned accordingly.

B. THE ACTION BEFORE THE ANDEAN GENERAL SECRETARIAT.

As shown in Table 1, according to the Andean Court of Justice Treaty, a Member State which considers that another Member State has failed to fulfill an obligation under the Treaty may bring the matter before the General Secretariat (AC) who shall deliver a reasoned decision. Following this provision, on 28 April, 1995 Venezuela brought an action against Ecuador for non-compliance with AC law before the General Secretariat of the Andean Community.⁹ The action was based on the wrongful restrictions introduced by the Ecuadorian administrative authorities to the imports of Belmont products.

According to Article 23 of the Andean Court of Justice Treaty,

[w]hen the General Secretariat considers that a member state has failed to fulfill an obligation under the Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. The member state concerned has to reply within a maximum period of two months.¹⁰

The opinion issued in the case by the General Secretariat in fact stated that Ecuador did not comply with Articles 107 and 110 of Decision 344 by having restricted the imports of the Venezuelan product. However, in the Secretariat's decision of December 1995, it was declared that Venezuela could not continue exporting Belmont products to Ecuador because PM had already begun local manufacture and therefore, the trademark was indeed being used by PM in that Member State.

C. THE NON-COMPLIANCE ACTION BEFORE THE ANDEAN COURT OF JUSTICE.

On the grounds of the General Secretariat's decision, Venezuela brought the matter before the Andean Court of Justice and sought a declaration that, as a result of an adminis-

9. The General Secretariat was called "Junta del Acuerdo de Cartagena" (Board of the Cartagena Agreement) until March, 1996 when amendments were introduced.

10. Treaty Creating the Court of Justice of the Cartagena Agreement, *supra* note 2, at 1207.

trative decision by the EIPO, Ecuador was not complying with AC law and was thus restricting the rights of a Venezuelan exporter, BAT, to freely introduce its products in the Ecuadorian market. Venezuela relied principally upon Articles 41, 42, and 45 of the Cartagena Agreement,¹¹ which are the general provisions on the free movement of goods in the Treaty; Article 7 of Commission's Decision 324¹² concerning the establishment of a common external tariff, liberation program, and incentives for intra-regional exports; and Articles 107 and 110 of Commission's Decision 344¹³ concerning the Andean Regime for the protection of Intellectual Property rights.

1. Provisions Relied Upon by Venezuela.

Article 41 of the Agreement of Cartagena is the corresponding law to Article 30 of the EC Treaty. It establishes as the objective of the liberation programme, the elimination of charges and restrictions of any nature to imports, and all measures having equivalent effect. Article 42 defines "charges" as custom duties and any other fees of equivalent effect with the exception of fees and other charges corresponding to the approximate cost of the services provided. Article 42 also defines "restrictions of any nature" as "any measure of an administrative, financial or foreign exchange nature by which a Member Country impedes or creates difficulties for imports by unilateral decision."¹⁴ The final paragraph of Article 42 partially corresponds to Article 36 of the EC Treaty. As in Article 36 of the EC Treaty, Article 42 exempts from the rule on free movement of goods the measures intended to protect public morality, public security, the life of humans, animals or plants, and national treasures possessing artistic, historic or archaeological value. Unlike Article 36 of the EC Treaty, Article 42 also excludes from the application of Article 41 measures regulating the trade in arms, munitions, and other war materials, trade in metallic gold and silver, and trade in nuclear and radioactive materials. However, the most relevant difference between Article 36 of the EC Treaty and Article 42 of the Cartagena Agreement lies in the fact that Article 42 does not include the "protection of industrial and commercial property"¹⁵ among the above cited exceptions. Likewise, the Cartagena Agreement does not contain an identical or similar rule to that of the last paragraph of Article 36 of the EC Treaty, which states that, "[s]uch prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."¹⁶ It is precisely these differences in both texts that have caused confusion and are now the core part of the decision under discussion in this paper. Finally, Article 45 of the Cartagena Agreement states that the liberation programme shall be automatic and irrevocable.

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11. Official Codified Text of the Cartagena Agreement Incorporating the Quito Protocol, July 26, 1988, 28 I.L.M. 1169.
 12. Commission Decision 324--Common External Tariff, Liberation Program and Incentives for Intrasubregional Exports, Aug. 25, 1992, 32 I.L.M. 211.
 13. Decision 344 Regarding Common Provisions on Industrial Property, Oct. 21, 1993, 34 I.L.M. 1635 (entered into force Jan. 1, 1994).
 14. Official Codified Text of the Cartagena Agreement Incorporating the Quito Protocol, *supra* note 11, at 1184.
 15. Treaty Establishing the European Community, *supra* note 5, art. 36.
 16. *Id.*
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Whilst under EC law the “protection of industrial and commercial property”¹⁷ exception is included in the EC Treaty itself, in the context of AC law such exception is found in AC's secondary legislation and, in particular, in Articles 107 and 110 of Decision 344. The relevant text of Article 107 states:

Where registrations of an identical or similar mark exist in the Subregion in the name of different owners for the identification of the same goods or services, the marketing of the goods or services identified with that mark in the territory of the Member Country concerned shall be prohibited, except where the owners of the said marks enter into agreements allowing such marketing.

....

In any event, the importation of a product or service that is in the situation described in the first paragraph of this Article shall not be prohibited where the mark is not being used on the territory of the importing country, as provided in the first paragraph of Article 110, except where the owner of the said mark satisfies the competent national office that the non-use of the mark is justified by legitimate factors.¹⁸

The first paragraph of Article 110 defines the concept of “use” for the purposes of Article 107. The provision declares:

A mark shall be considered to be in use where the goods or services distinguished by it have been brought into circulation or are available on the market under that mark, in such form and quantities as are normally appropriate, due account being taken of the nature of the goods or services and the procedures according to which their market distribution takes place.

A mark shall also be considered used when it distinguishes goods intended solely for exportation from any of the Member Countries¹⁹

2. *The Andean Court's Approach.*

a. Aspects of form.

From a formal point of view, the case shows a more sophisticated form of reasoning consistent with the Court's prior judgments concerning the same subject-matter and following some of the most relevant previous decisions to emphasize some points in the text of the judgment.

Even though the Court expressly stressed that the case law and doctrine of the ECJ are not entirely applicable to the case because Article 42 of the Andean Community is not identical to the wording of Article 36 of the EC Treaty, the Court borrows the case law of the ECJ

17. *Id.*

18. Decision 344 Regarding Common Provisions on Industrial Property, *supra* note 13, at 1646.

19. *Id.*

and even quotes the EC cases of *Consten & Grundig* and *Terrapin/Terranova*²⁰ for its judgment. This appears to show a certain hierarchy whereby the Andean Court of Justice seems to consider the case law of the ECJ of a supreme character and, accordingly, of great influence as far as Andean case law development is concerned. Unfortunately, the Andean Court of Justice tends to look at the EC experience only to a certain extent, ignoring further developments of EC law that may imply a different approach from that taken by the ECJ in its earlier cases. For example, it is true that *Consten* and *Terrapin* are classic cases in the European Community. Nonetheless, those cases (decided in the 1960s) have been refined and redefined both by the ECJ and the European Commission. Therefore, it is submitted that this partial application of the EC doctrine and case law by the Andean Court of Justice should be carefully re-assessed. If the Court considers that the experience of the European Community is relevant to the development of the Andean Community's legal order, then it should carry out a more profound and serious analysis of the ECJ's cases and truly learn from the difficulties faced by the EC Member States in applying EC law. Otherwise, the Andean Community will end up unnecessarily going through the same difficulties that EC Member States had already overcome a long time ago, and eventually, applying a foreign system of law to an integration process with different circumstances and realities.

b. On the Free Movement of Goods (FMG).

The Court's judgment begins by emphasizing the goal of the free movement of goods in the region and the final goal stated in Article 1 of the Cartagena Agreement of creating a Latin American common market. According to the Court, the principles of free competition and non discrimination should be closely related to the principle of the free movement of goods. Together, the Court believes, they become adequate mechanisms for the completion of the common market.

The Court then defined restrictions on imports as "any regulation and legal or administrative provision issued unilaterally by a member state that may disable or restrict imports."²¹ When defining this term the Andean Court of Justice appears careful enough to avoid an extremely broad construction of the term. This could be in fact a clear lesson that the Andean Court of Justice might have learned from the ECJ who, until the *Keck*²² case, was at pains to retreat from its so-called "Dassonville formula."²³ Dassonville was the

20. Case 119/75, *Terrapin Overseas Ltd. v. Terranova Indus. C.A. Kapferer & Co.*, 1976 E.C.R. 1039, [1976] 2 C.M.L.R. 482 (1976).

21. See Judgment, *supra* note 1.

22. Joined Cases 297 & 268/91, *Keck & Mithouard Case*, [1995] 1 C.M.L.R. 101 (1993).

23. Case 8/74, *Procureur Roi v. Dassonville*, 1974 E.C.R. 837, 2 C.M.L.R. 436 (1974).

first case where the ECJ initiated its expansive interpretation of Article 30 of the EC Treaty and broadly defined a measure of equivalent effect to quantitative restrictions as “[a]ll trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.”²⁴ In *Keck*, the ECJ quoted the *Dassonville* formula and then stated that there was a need for it to clarify the case law in light of the increasing tendency of traders to invoke Article 30 of the EC Treaty to challenge national rules, even where those rules were not aimed at imports. The Court then declared:

16. Contrary to what has previously been decided, the application to products from other Member States of national provisions restricting or prohibiting certain selling arrangements is not such as to hinder directly or indirectly, actually or potentially, trade between Member States within the meaning of the *Dassonville* judgment . . . so long as those provisions apply to all relevant traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States.

17. Provided that conditions are fulfilled, the application of such rules to the sale of products from another Member State meeting the requirements laid down by that State is not by nature such as to prevent their access to the market or to impede access any more than it impedes the access of domestic products. Such rules therefore fall outside the scope of Article 30 of the Treaty.²⁵

Therefore, under EC law and following *Keck*, the *Dassonville* formula now has only a limited function and all restrictions on trade caused by market circumstances fall prima facie outside the ambit of Article 30 of the EC Treaty.

As said before, the approach of the Andean Court of Justice appears more balanced. However, whether the term continues to be developed or broadened by the Court will depend to a large extent on the cases brought by the Member States in the future.

c. Free Movement of Goods Against the Protection of Trademark Rights.

The Court's decision touches upon three issues as far as this aspect is concerned. The first issue involves the collision between the integration goals of free movement of goods and protection of intellectual property rights. Second, the fact that the protection of intellectual property rights as an exception to the principle of the free movement of goods is not primary law in the Andean Community. Third, the fact that the Court's interpretation of the law must seek a balance between the protection of rights under the free movement of goods and the protection of intellectual property rights.

24. *Id.* at 851.

25. *Keck & Mithouard*, 1 C.M.L.R.

In order to tackle these three issues, the Court took the view that a "conciliation process" was necessary so as to impede the abusive exercise of intellectual property rights that may artificially limit trade in the region. The Court stated:

it is indispensable to determine to what extent the exercise of intellectual property rights is legitimated so as to be included in the list of exceptions to the free movement of goods. Because, when trademark rights are exercised to prohibit imports, on the grounds of reasons outside the essential functions of the mark, [that right] is not vested with legitimacy or authority sufficient to unjustifiably affect imports trade.²⁶

Additionally, the Court ruled that the only justified reason to use intellectual property rights as an obstacle to the free movement of goods is the protection of the right to the exclusive use of the trademark determined by virtue of the "economic public order,"²⁷ which is ultimately the protection of the consumers. Furthermore, the Andean Court of Justice looked at the relationship between the right to exclusivity and the protection of consumers, and concluded that the main function of the mark is to give the consumer the possibility to distinguish one product from the other. Accordingly, the Court rejected the argument of the defendant that, under AC law, intellectual property rights do not constitute a restriction to the free movement of goods.

d. Trademark Registration and Trademark Protection.

Following previous case law of the Court,²⁸ the Andean Court of Justice ruled that the right to the exclusive use of a trademark is not absolute because it is not the simple granting of a monopoly for the exploitation of an economic source. The right of the trademark owner to the exclusive use of the mark has to be exercised within the limits and exceptions imposed by AC law in order to protect the commercial and economic function of that right. On this point, the Andean Court of Justice borrowed the distinction between existence and exercise of the right drawn by the EJC in *Consten & Grundig*²⁹ and in *Terrapin v. Terranova*.³⁰ In the later case, the European Court ruled that:

26. See Judgment, *supra* note 1.

27. *Id.*

28. Process 5-IP-94 and Process 10-IP-94.

29. Joined Cases 56 & 58/64, *Consten & Grundig v. Commission*, [1966] E.C.R. 299.

30. Case 119/75, *Terrapin Overseas Ltd. v. Terranova Indus. C.A. Kapferer & Co.*, 1976 E.C.R. 1039, [1976] 2 C.M.L.R. 482 (1976).

[w]hilst the Treaty does not affect the existence of rights recognized by the legislation of a Member State in matters of industrial and commercial property, yet the exercise of those rights may nevertheless, depending on the circumstances, be restricted by the prohibitions in the Treaty. . . . It follows from the above that the proprietor of an industrial or commercial property right protected by the law of a Member State cannot rely on that law to prevent the importation of a product which has lawfully been marketed in another Member State by the proprietor himself or with his consent.³¹

Accordingly, the Andean Court of Justice concluded that a trademark registration is not enough title to impede the importation of products under an identical trademark.

e. Trademark Use.

Following its previous case law,³² the Andean Court of Justice ruled that the use of a trademark has to be real and effective and not only formal or symbolic. Under Article 110 of Decision 344, a mark is considered to be used when the products or services covered by the mark are "commercialized or available on the market in reasonable quantity and normal fashion."³³ Moreover, the Court said, the use of a trademark for exporting purposes only is considered sufficient proof of use under Article 110, but it cannot be used to impede imports from other Member States. In the present case, PM used trademark Belmont for exporting purposes only. It was only after BAT began exports based on the above provision that PM also commenced using trademark Belmont effectively on the Ecuadorian market.

f. Effects of the Administrative Restrictions to Imports.

The Court confirmed that Ecuador in fact had issued five unilateral administrative decisions prohibiting the introduction of BAT's products to the Ecuadorian market. However, the Court suggested that, even though the first four decisions were illegal because they did not verify whether there was indeed an internal use of PM's trademark, the last decision issued by the EIPO did show that PM's mark was used internally at the time that decision was issued.

Consequently, the Court ruled that any liability derived from the individual prejudice that may have been caused as a result of the prohibition to import Belmont tobacco from Venezuela to Ecuador, belongs to the internal responsibility of each Member State and that it is Ecuador who will have to decide which are, according to internal procedures and actions, the measures that may have to be taken in relation to the effect of Ecuador's non-compliance in that particular case.

31. *Id.* at 1039-40.

32. Process 17-IP-95.

33. Decision 344 Regarding Common Provisions on Industrial Property, *supra* note 13, at 1646.

3. *The Judgment.*

Finally, the Andean Court of Justice declared that Ecuador had not complied with Articles 41 and 42 of the Cartagena Agreement and Article 107 of Commission's Decision 344, as a consequence of the prohibition to import products under trademark Belmont from Venezuela, during the period between April 18, 1994 and the day before Decision No. 940889 was issued by EIPO on November 4, 1994. Secondly, the Andean Court of Justice declared that Article 45 of the Cartagena Agreement, Article 7 of Decision 324, and Article 110 of Decision 344 were not subject to non-compliance by Ecuador. Thirdly, the Court admonished Ecuador to apply the necessary measures towards the re-establishment of the rights of the individuals affected by the non-compliance situation.

a. Clarification and Amendment.

Following the judgment, Ecuador applied for a "clarification and amendment" from the Court concerning some of the sections of the Court's reasoning. The Court stated that the contents of the judgment could not be amended or changed without, in doing so, changing the fundamental legal basis of the act.³⁴ Therefore, the Court refused to enter into any further analysis of the content of its judgment and insisted on the fact that it could only review formal aspects thereof.

4. *Practical Consequences of the Judgment.*

The practical consequences for traders of the *Belmont* decision may be summarized as follows.

First, the trader who owns a trademark in Member State A, but only uses it for exporting purposes, will still be able to stop imports from other Member States if, once the importer has launched its products in the market of Member State A, the trader commences internal use of the trademark in that Member State.

By limiting the extent of Ecuador's non-compliance to the day before the last administrative decision prohibiting imports from Venezuela, the Andean Court of Justice has maintained the ban to the coexistence of PM and BAT's products in the Ecuadorian market. The result is the application of trade barriers, with the total support of a Court that is supposed to ensure the free movement of goods in the region. While the spirit of AC law seeks to avoid trademark owners using their rights in order to unreasonably block the free movement of goods, the Andean Court of Justice in the *Belmont* case shows a contradiction, which is hindering the Andean integration process.

Furthermore, the Court made no attempt to explain why the EIPO's last decision of November 4, 1994 was indeed in compliance with AC law. The Andean Court of Justice only stated that, unlike the other decisions, this one did verify the internal use of PM's trademark. Nothing was said, however, with regard to the fact that that use was a predictable reaction and a tactic from a trader threatened by the actual and legal entry of a competitor to the market. It is submitted that this aspect of the case was quite incorrectly disregarded by the Andean Court of Justice, especially since, during the process, PM never tried to justify why they did not use their mark for more than thirty years.

34. Process 2-AI-96, OG 291, Sept. 3, 1997, at 20.

Secondly, the Andean Court of Justice is not competent to determine the liability of private parties affected by a Member State's non-compliance with AC law. Therefore, the liability derived from the individual prejudice that may have been caused to the importer is to be determined by each Member State according to the state's own internal procedures and measures. The question then arises whether the legal instruments available at a national level are sufficiently developed to regulate and remedy situations that, as the one in question, are a clear result of the development of the integration process at a regional level.

5. *Further Assessment by the Andean Court of Justice.*

According to Article 59 of the Court's Statute, the Court may amend or clarify a judgment by their own initiative or upon application by the parties. Following this provision, Venezuela asked the Court to amplify, amend, and clarify the *Belmont* judgment.

IV. Conclusion.

The introduction of a common external tariff and the consolidation of the liberation programme through the Commission's Decision 324 has given the Andean integration process more credibility, but it also has raised the question of how its implementation is going to affect Member States and private parties.

Certainly the Andean Court has, by its recent decision-making in the field of intellectual property, brought about some clarification towards the establishment of a balance between the free movement of goods and the protection of trademark rights. Nonetheless, it seems that this time, the Court has increased the confusion and created a contradiction between the spirit of AC law and its actual practice. As it becomes clear, the journey to Andean integration is still a long and tedious one.