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Correspondence from Section Members

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Correspondence from Section Members

Letter to the editor dated December 27, 1976, concerning Mr. Zamora's article on the Andean Common Market, from Burton D. Hunter.

Dear Mr. Freeman:

I have just completed reading Antonio R. Zamora's article on the Andean Common Market (ANCOM) in the Winter, 1976 issue of *The International Lawyer*, and have discovered what I believe to be a rather serious error. Mr. Zamora states, on page 157:

In addition to the immediate limitations discussed above, Decision 24 stipulates that foreign enterprises shall become at least mixed enterprises within a period of 15 years in the more developed countries (Venezuela, Colombia, Peru and Chile) and in 20 years in the less developed (Bolivia and Ecuador).

This is simply not true, either under Decision 24 as originally adopted or under any of the recent amendments thereto. Nor is it true, to the best of my knowledge, under the internal legislation of any ANCOM member.

Decision 24 provides that foreign companies must "fade out" (transform themselves into mixed or national companies) under two sets of circumstances.¹ Foreign companies actually in existence in an ANCOM member country as of January 1, 1974 who wish to take advantage of the tariff provisions of the *Acuerdo de Cartagena* must transform themselves into mixed or national companies in a period, beginning January 1, 1974, which must not exceed 15 years in Colombia, Peru, and Venezuela, or 20 years in Bolivia and Ecuador.² New companies established after July 1, 1971 must also transform themselves into mixed companies within a period of 15 or 20 years, depending on the country in which

¹In addition, special "fade-out" provisions are provided in Decision 24 for banks who wish to continue receiving local deposits (Article 42) and companies active in the fields of internal transportation, advertising, radio and television broadcasting, newspapers, magazines, and internal commercialization of products (Article 43).

²Decision 24, Article 28, as amended by Decision 103, Article 7.

the company is located.³ Article 34 of Decision 24 grants an exemption from the fade-out rule to new companies who export 80 percent or more of their production to other than ANCOM members; Article 9 of Decision 103 does the same for companies engaged in tourism.

Decision 24 also provides that member countries may reserve certain economic sectors for national companies only.⁴ However, the obligation to transform or stop doing business in such cases comes from the legislation of the individual member country, with the possible exception of those types of companies listed in Articles 42 and 43 of Decision 24, *supra*. Some ANCOM members have adopted such legislation; see, for example, Venezuela's Decree 62.⁵

In summary, with certain exceptions, foreign companies which existed in an ANCOM member country prior to July 1, 1971 and which do not intend to take advantage of the tariff provisions of the *Acuerdo de Cartagena* may continue to do business without the requirement of transformation. The number of companies meeting these criteria is undoubtedly rather substantial; for this reason, I feel the misstatement in your article ought to be corrected.

Very truly yours,
Burton D. Hunter,
Schering-Plough Corp.,
Kenilworth, N.J. 07033

Letter to the Editor from Hans Moller, dated February 3, 1977 concerning Mr. Weinschenk's article on *Nazis before German Courts*.

Dear Sir:

It was a pleasure to find, just after joining the ABA Section of International Law, an article in your periodical on the prosecution of Nazi criminals. It gave me the feeling that I was not alone with my wife, with some friend some hundred miles away in Heidelberg, Cologne or Hamburg. I am not a Jew, and my parents managed to escape persecution: but I have been taught who holds the power when my home town judges and prosecutors suspected that I was not willing to accept the moral views of a murderer gang.

³Decision 24, Article 30.

⁴Decision 24, Article 38.

⁵Gaceta Oficial de la Republica de Venezuela, No. 1650 Extraordinario, April 29, 1974.

Mr. Weinschenk caught the point by stating that "disobedience to orders . . . is deeply repugnant to the German character. . . ." This is still true for modern Western German society: whoever questions the legality of an order of a superior will be prosecuted. So trials against Nazi criminals give me the impression of Kleist's "Broken Jar" Judge Adam prosecuting himself.

Being aware that nobody can be impartial in assessing Nazi crimes, Mr. Weinschenk's appreciation of the German trials seems to me too optimistic. The legal construction: whoever kills a man on order acts as an assistant of his superior may be challenged on psychological reasons (a problem we have to deal with, here, now). The necessity to investigate, and investigate, and investigate more is a familiar trick to flatter charges in oblivion. I should like to observe that the German-French Extradition Treaty mentioned [on] page p. 527 is not due to the pains of the Federal Government, but to Mrs. Beate Clarsfeld who risked imprisonment by kidnapping symbolically a Nazi criminal when the ratification of the treaty was blocked by an old Nazi MP.

Thank you and thanks to Mr. Weinschenk for giving attention to a problem which is taboo in Germany but vital for my country as well as for all the world. I enclose a copy of this letter, asking you to transmit it to Mr. Weinschenk with my thanks and best wishes.

Sincerely yours,
Hans Moller

