agency status, the AIT and CCNAA should be considered as falling within this category.

It is thus the conclusion of this study that agreements between the United States and Taiwan are agreements between states, and that agreements between the AIT and CCNAA must therefore be accorded recognition under international law as valid international agreements of equivalent status.

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# Colombian Patent Sale Procedures Indicative of Governmental Regulatory Processes in Latin America

Patent sales in Colombia are quickly becoming a popular novelty. For years, the Andean Pact (Andean Regional Common Market) regulations have restricted payments of royalties by domestic Colombian companies or by registered branches of foreign companies, under industrial property licensing agreements or pursuant to technical assistance agreements. Especially regulated are those payments to be made to affiliated foreign-owned companies. However, Andean Pact legislation did not include explicit restrictions on outright sales of industrial property, even between affiliates. In 1980, this potential exception is beginning to be tested by some companies and although the outcome is not yet certain, the preliminary indications are positive.

Since the international treaty which governs the Andean Pact (Decision 24 of the Agreement of Cartagena)[1] has been adopted by all of the member countries (Venezuela, Colombia, Ecuador, Peru and Bolivia), the potential for successful utilization of patent sales exists not only in Colombia but in all member countries. Colombia will be evaluated in this article because, of the Andean Pact countries, it traditionally has been the most assertive of the Andean Pact countries and is experiencing a mild economic boom that is expected to continue throughout this decade.

### Advantages of Patent Sales to Colombian Companies

Presently, Colombian affiliates use their companies' industrial property without paying remuneration to the owner. The lack of payment results

[1]Andean Agreement of Subregional Integration, signed May 26, 1969 ("The Cartagena Agreement").

from the inability to deduct any royalty payments made under a license agreement with the parent affiliate.

However, if the patent acquisition exception materializes, an operating company (registered in Colombia) could *purchase* patents from its foreign (not domiciled in Colombia) affiliate at any reasonable price it might choose. The tax consequences to the seller would be minimal (Twelve percent on gross receipts of the sale, providing the seller is not domiciled in Colombia). The purchased industrial property would appear on the books of the purchaser and could be amortized over a five-year period. In addition to the favorable tax treatment of such a transaction, payments to a foreign affiliate in dollars would virtually be assured of eventual Central Bank approval.

**Procedures to Follow**

(1) A seller not domiciled in Colombia should register any potentially valuable invention in Colombia and obtain a Colombian patent.

(2) A draft contract must be prepared between buyer and seller establishing:

A. parties to the contract,
B. object of the sale,
C. values of the patents to be sold,
D. terms of payment,
E. terms of changing title.

(3) The approval of the sale by the Royalty Committee of the Ministry of Development must be obtained even though this is not a royalty. (Many firms are seeking rulings from the Royalty Committee indicating that patent sales will not be subject to the Committee's scrutiny).

(4) The purchaser (domiciled in Colombia) must receive approval to amortize the cost of the patents from the Ministries either of Mines, Banking Superintendency or General Direction of Taxes, depending upon the sector of the purchaser's operations.

(5) Once the approvals in (3) and (4) are obtained, the contract must be executed abroad. This is done in order to avoid legally the Colombian Stamp Tax.

(6) Once signed, the contract must be registered with the Division of Industrial Property. No "approval" is contemplated in this procedure. The seller then must transfer title of the purchased patents to the purchaser as required.

(7) The seller, remaining non-domiciled, must appoint an attorney in fact to file its annual tax return(s) in Colombia.

(8) When actual payments are to be made, Exchange Control authorities' approval must be granted in order to remit abroad. No withholding is contemplated.

**Risks Involved**

(1) If the Royalty Committee exercises its arguable authority to veto the operation, the transaction may go no further.

(2) If the Royalty Committee declines jurisdiction over the sale, the tax authorities, *i.e.*, the General Direction of Taxes, may prevent the purchaser from amortizing the cost of the patents, thereby negating the tax benefits of the operation.

(3) The vague and contradictory nature of many governmental regulations subjects companies to the risk that they may unwittingly violate exchange control and Andean Pact regulations. Submitting to a rigorous approval procedure, as outlined above, could subject other company practices to review and criticism.

(4) Failure to obtain prior approval from the Tax Authorities for amortization creates the risk of fines and penalties.

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