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If the revolutionary foreign investment rules for the Andean Subregional Common Market ("ANCOM" or "Market") become effective, they will rank as the harshest restrictions on foreign capital and technology imposed by a group of Western countries in recent times.

Adopted as Decision 24 by the Market's governing body, the ANCOM Commission ("Commission"), in Lima on December 31, 1970, the rules were published two weeks later under the title "Common Rules Governing the Treatment of Foreign Capital, Trademarks, Patents, Licenses and Royalties" ("Code").[1]

The Code was prepared pursuant to Arts. 26 and 27 of the so-called Cartagena Agreement[2] of 1969 by which Boliva, Chile, Colombia, Eucador and Peru created the Market within the framework of the Latin American Free Trade Association ("LAFTA").[3]

The Market covers about 50 million people in an area half as large as the

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[1]Translated in 10 INTERNATIONAL LEGAL MATERIALS (Jan. 1971).

[2]Agreement on Andean Subregional Integration signed in Bogota on May 26, 1969 [translated in 8 INTERNATIONAL LEGAL MATERIALS (Sept. 1969)]. The agreement calls for the elimination of all trade barriers among member countries by December 31, 1980 and the establishment of uniform tariff barriers against third countries by December 31, 1985.

[3]The main purpose of the Andean Market is to accelerate the economic development of its member countries as compared with the necessarily slower integration process of the entire LAFTA area. (LAFTA's free trade deadline has been postponed to 1980.) Another purpose is to gain lead time for building up ANCOM's industrial sector so that it will be able to compete with the industries of the "Big Three"—Argentina, Brazil and Mexico—when the ANCOM nations will have to remove their tariffs from goods imported from the other LAFTA countries. Art. 110 of the Cartagena Agreement provides that the agreement is to remain in effect until superseded by the commitments under the Treaty of Montevideo of February 18, 1960 which created LAFTA. *See generally*, ERELI, "The Andean Common Market" 8 HOUSTON L. R. (Jan., 1971) Business International Corporation, *The Andean Common Market* (Dec. 1970); Garcia Amador, *Latin American Economic Integration*, 2 LAWYER OF THE AMERICAS, 445-449 (Oct. 1970); and McDermott and Wieland, *Latin American Economic Integration*, 10 VA. J. INT'L. L. 139-179 (Dec. 1969).

United States. U.S. direct investment in that region exceed U.S. $2.4 billion according to latest estimates.[4]

By Art. 27 of the Cartagena Agreement, the ANCOM countries agreed to take the necessary steps for implementing the Code within six months from its adoption by the Commission.[5] The Code will become effective when all of the ANCOM governments have filed their implementation instruments with the ANCOM Secretariat in Lima ("Effective Date") [Art. A].

1. Purpose

The Code's three principal purposes are:[6]

1) to exclude foreign investments from key sectors of the Market's economy;
2) to reduce foreign participation in local companies to a minority position;
3) to diminish reliance on foreign technology while stimulating the development of local technology.

The Code sets minimum standards of stringency for the treatment of foreign investments in the Market. Each ANCOM government is expressly permitted to impose even harsher restrictions on foreign investments than those provided for under the Code.[7] Conversely, these governments are prohibited from treating foreign investors better than their own nationals [Arts. 33 and 50].

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[4]According to the October 1970 issue of the *Survey of Current Business* published by the U.S. Department of Commerce, this total reflects the book value of these investments in 1969 comprised of U.S. $846,000,000 for Chile; $684,000,000 for Colombia; $704,000,000 for Peru and an estimated $210,000,000 for Bolivia and Ecuador.

[5]It is not clear what would happen if any of the ANCOM countries failed to implement the Code within that period. The author understands that the alleged unconstitutionality of the Code's enactment by executive decree rather than ratification is being tested in the Colombian courts. (Except for Chile and Colombia, which still have operating legislatures, all other ANCOM countries are presently ruled by executive decree.) It is also claimed that the Code violates the Colombian constitution's prohibition of discrimination against foreigners.

[6]Apart from the growing nationalism in this area, the Code's drafters have apparently been motivated by the fear that the new Market would attract more direct investment from abroad and thus increase the foreign participation in certain ANCOM industries. Thus the Market's prime objective, which is to promote the domestically-owned economy, would be undermined. This argument is sometimes referred to as the "Trojan horse theory" pointing to the natural tendency of foreign investors to take advantage of expanding trade in tariff shelter areas through local subsidiaries. *See* Business International Corporation, *op. cit., supra.*

[7]Peru's Industrial Law [Decree—Law 18350 published on July 30, 1970, regulated by Supreme Decree 001-71-I.C.-D.S. of January 26, 1971] already surpasses the Code's severity in many respects, and Chile is about to follow suit. A translation of the Law appears in 9 INTERNATIONAL LEGAL MATERIALS (Nov. 1970).

2. Definitions

Some of the terms used in this article are defined as follows:

existing foreign company (or investment): an enterprise established, or investment made, prior to January 1, 1971, in which ANCOM investors have less than 51% ownership and no management control [Arts. 1 and 28].

new foreign company (or investment): an enterprise established, or investment made, after December 31, 1970, in which ANCOM investors have less than 51% ownership and no management control. Investments made after that date in existing foreign companies are also regarded as new foreign investments [Arts. 1 and 30].

mixed company: an enterprise in which domestic investors have management control and an equity participation of from 51 to 80%. (The equity participation of the domestic investors may be less than 51% if that participation is in the hands of an ANCOM government or government enterprise or CORANFO, the Andean Development Corporation. The minimum government participation required for characterizing an enterprise as "mixed" is to be determined by the Commission within three months after the Effective Date.) [Arts. 1, 30 and 36].

domestic investors: individuals and legal entities that are nationals of the recipient country receiving the investment in question, as well as foreign citizens who have been residents of that country for more than one year and have waived their rights to repatriate capital and profits under the Code. Nationals of other ANCOM countries and CORANFO will be regarded as domestic investors in new foreign companies. [Arts. 1 and 30].

It should be noted that there is no monetary floor for foreign investments subject to the Code. Even investments in negligible amounts must be reported. The Commission will presumably correct this and other inadequacies by issuing appropriate regulations [Art. 52 b].

3. Controls

To administer the curbs on foreign investments under the Code, each ANCOM country is to establish or designate one or more offices for this purpose ("Control Office") within three months after the Effective Date [Arts. 5, 6 and D].

All foreign investments existing on the Effective Date will have to be registered with these Control Offices within six months after that date[8] [Arts. 5, B].

All new foreign investments in the ANCOM area will have to be authorized[9] by the respective Control Offices before they may be registered and effected [Arts. 2 and 5].

[8]It is probable that national statutes implementing the Code will exempt foreign investments which already had to be registered in certain ANCOM countries, such as Colombia, from being registered again.

[9]The Code's authorization requirements for new foreign investments, and transfers of

Registration of the investment will be the basis for determining the amounts eligible for profit and capital repatriation [Arts. 8 and 12].

Applications for authorization of new foreign investments must follow the form of Annex 1 to the Code. Among other things, applicants will have to show that their proposed investments will tend to reduce local shortages in a) savings, b) foreign exchange, c) managerial capacity, d) entrepreneurial spirit, e) technology and f) foreign marketing capacity [Annex I, Ch. III].

Transfers of equity from one foreign investor to another will also require prior Control Office authorization [Art. 7].[10] The same applies to the reinvestment of profits [Art. 12] though member countries may dispense with authorization for reinvestments not exceeding five per cent of annual net profits. All such transfers and reinvestments will have to be registered [Art. 13].

The data to be registered include a statement of the amounts invested or to be invested in "freely convertible foreign currency." When registering with the Control Office, new investors must also file the investment contracts or "fadeout" agreements which they have concluded with their host governments [Art. 5].

No foreign companies will be allowed to issue bearer shares. In the case of existing foreign companies, bearer shares will have to be converted into registered shares within one year from the Effective Date [Art. 45].

4. Existing Foreign Investments

Certain existing foreign investments in key sectors of the Market will be subject to mandatory divestment under the Code. All other existing majority-owned foreign investments will be allowed to continue indefinitely provided they are willing to forego tariff and other ANCOM privileges afforded to their local competitors.[11]

The areas of mandatory divestment in which foreign firms will have to

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foreign investments to other foreign investors, presumably apply only to those made after the Effective Date. Unauthorized investments or transfers made between January 1, 1971 and the Effective Date are probably registrable unless they fall within the prohibited categories of Arts. 40 through 43.

[10]*See* note 9 *supra*.

[11]Under Arts. 16 and 17 of the Peruvian Industrial Law, *op. cit., note 6, supra,* all foreign investments in Peru are subject to mandatory divestment. In the case of basic industries, which will become state-owned, the divestment will be complete. In all other industries foreign participation will have to be gradually reduced to 33-1/3 % for wholly foreign-owned companies and to 49% for foreign-owned companies with a domestic participation of not less than 25%.

reduce their equity and management participation to less than 20% within three years from the Effective Date are limited to:[12]

a) *the domestic wholesale and retail trade;*
b) *the communications industry* including advertising and public relations firms, commercial radio stations, TV stations, newspapers and periodicals; and
c) *domestic transportation* [Art. 43].

But no assurances are given in the Code that foreign investments in other economic sectors may not also eventually be forced to sell out to local interests. The right of each ANCOM country and the Commission to impose additional mandatory divestment rules in their respective jurisdictions is expressly reserved [Art. 38].

The Code allows member countries to waive divestment requirements "in special circumstances" but foreign companies benefiting from such waivers will forfeit Market benefits in any event [Art. 44].

Optional "fade-out" rules apply to all existing foreign investments other than those noted above. Under these rules the foreign investor will either relinquish majority ownership and control within a given time limit or have his company forfeit tariff preferences and other benefits [Art. 44].

Foreign-owned commercial banks form a special category under these rules. Within three years from the Effective Date, the equity of their foreign shareholders will have to be reduced to less than 20% or the banks will lose the right to accept local deposits [Art. 42].

The basis for the optional "fade-out" formula is Art. 27 which, in translation, reads as follows:

> Art. 27.—The benefits of liberation [from trade and other restrictions] under the Cartagena Agreement shall be available only to products manufacutred by domestic or mixed companies of member countries or by foreign companies which are in the process of changing into domestic or mixed companies in accordance with the terms of this chapter. (Bracketed language provided.)

In other words, foreign companies will not enjoy any duty or other ANCOM benefits, and thus will not receive the certificates of origin required by the customs authorities to qualify their products for reduced Market tariffs, unless they relinquish majority ownership and control [Arts. 28 and 29].

With one important distinction, the "fade-out" rules for existing foreign investments are similar to those for new foreign investments. This distinction lies in the option of retaining majority ownership and control which

[12]The Code does not indicate whether these rules apply also to activities which are ancillary to the principal business of a foreign company, e.g., operation of local sales outlets of an existing foreign manufacturer.

owners of most existing foreign investments have, but which is generally not granted to new foreign investors.

Owners of existing foreign investments have three years from the Effective Date in which to exercise their fade-out options [Art. 28]. Only upon entering into a "fade-out" agreement will foreign companies qualify for duty and other Market benefits. (The answer as to whether and when a company should enter into such an agreement will differ from case to case depending largely on the effect of tariffs on its competitive position in the Market.) [*Cf.* Arts. 27, 28, 29 and 32].

If an existing foreign company enters into a fade-out agreement[13] with the government it must, subject to certain exceptions,[14] reduce its equity and management participation to not more than 49% (and possibly less than 20%) over a maximum of fifteen years from the Effective Date if the company is located in Chile, Colombia or Peru and twenty years if it is located in Bolivia or Ecuador.

Existing foreign companies which have agreed to fade out must transfer at least 15% of their stock to domestic investors within three years from the Effective Date and at least an additional 30% (i.e. have at least 45% of their equity owned by domestic shareholders) by the time two-thirds of the fade-out period have elapsed [Art. 28].

Except with respect to foreign investment in domestic trade, communications and transportation, in which the final target for local participation is not less than 80%, the minimum percentage of local investment in existing foreign companies is to be 51% at the end of the divestment period under the Code.

The precise terms of the divestment must be negotiated with the host governments and set forth in the fade-out agreements.

These terms include provisions for gradually turning over the technical, financial, commercial and administrative management to local investors and their representatives, and the manner of determining the price of the shares or other form of equity participation[15] at the time of sale [Art. 31 c) and d)].

No investment or "fade-out" agreement may include clauses which

[13]The Code provides that these agreements will be concluded directly with the foreign companies acting on behalf of their foreign shareholders or other owners [Arts. 28, 29 and 30].

[14]Under Art. 39 existing foreign investments in the minerals, pipeline, forestry Art. 40], public utilities [Art. 41] and financial [Art. 42] sectors are exempt from the time and percentage limits of the fade-out rules of Arts. 27 through 37. But like all other foreign investments they will not qualify for ANCOM benefits without a commitment to fade out [Art. 44].

[15]The drafters of the Code, probably inadvertently, failed to consider the technical difficulties of "fading out" foreign branch operations.

remove the jurisdiction and venue with respect to disputes from the country in which the investment is made. Nor are clauses permitted which provide for subrogation of the foreign investor's rights to his government [Art. 51].

The government or government-owned enterprises of the host country must be given a right of first refusal ("opcion preferencial") in sales of foreign-owned investments under the fade-out rules [Art. 35].

The only penalty provided in the Code for non-compliance with fade-out agreements is loss of ANCOM benefits for the company in question, including cancellation of certificates of origin for its products [Art. 32]. But, short of expropriation, governments could also sue the foreign company for breach of contract or for specific performance, if the latter remedy is available under their law.

5. New Foreign Investments

Once the Code goes into effect, the range of business open to new foreign investment in the Andean Common Market will be curtailed severely. To be admitted to the Market, new foreign investors will have to pay an entrance fee in the form of a mandatory[16] "fade-out" agreement.

The Code closes the door to new foreign investments in the following sectors:

a. *the domestic wholesale and retail trade* (existing investments in this area are also subject to mandatory divestment) [Art. 43];

b. *the communications industry,* including advertising and public-relations firms, commercial radio stations, TV stations, newspapers and periodicals; mail; telephone and telecommunications systems (all of which, except for mail, telephone and telecommunications systems are also subject to mandatory divestment rules for existing investments, as mentioned above) [Arts. 41 and 43];

c. *public utilities including domestic transportation,* drinking-water and sewerage, electric power and lighting, gas and sanitary services [Arts. 41 and 43];

d. *insurance companies, banks and other financial institutions* (as noted above, existing foreign commercial banks wishing to retain local deposits are subject to mandatory divestment) [Art. 42];

e. *manufacture of products reserved* to Bolivia and Ecuador under *Art. 50 of the Cartagena Agreement* in other ANCOM countries (except if pursuant to agreements entered before 1971). [Art. 46].

The exclusions set forth under a) through d) above as well as the restrictions affecting new foreign investments in the extractive industries

[16]As noted above, this contrasts with the optional character of such agreements for existing foreign investments.

described below, may be waived by the recipient governments in exceptional circumstances. But foreign companies or investments covered by such waivers lose all Market benefits [Art. 44].

Access to the exploration and exploitation of minerals, including oil and gas, the oil and gas pipeline business and the exploitation of forestry products is still left open to new foreign investments under the Code. But such investments will be authorized only in the ten-year period following the Effective Date and then only under concession contracts having a duration of not more than 20 years. Participation of the host government or its enterprises in oil and gas concession contracts is "preferred." Foreign investors in this sector will not qualify for local depletion allowances but may be authorized to repatriate annual net profits in excess of the general remittance limit of 14% of registered captial [Arts. 37, 40 and 43].

It should be remembered that these areas, too, may eventually be closed off. This may be done either by action of the Commission for the entire Market, or by action of a member government for its country, restricting the field of business in question to domestic or mixed companies, or reserving it entirely to the public sector [Art. 38].

If the desired investment area is open to the foreign investor, he must meet three prerequisites before he will receive authorization to invest under Art. 3 of the Code.

These prerequisites are as follows:

1. Generally, only so-called grass-roots investments will be authorized. New foreign investments in an existing enterprise will be authorized only if they are:

    a. necessary to avoid the imminent bankruptcy of such enterprise. Even then the foreign investor must agree to "fade out" within ten years [Art. 3];

    b. made in connection with a capital increase of a "national" or "mixed" company without impairing such company's investment status [Art. 4]; and

    c. transfers of existing foreign investments from one foreign investor to another [Arts. 2 and 7].

2. New foreign investments will be authorized only if they fit into the development priorities of the recipient country and are made in areas not adequately served by local enterprise [Arts. 2 and 3].

3. Reinvestments of profits by foreign companies will be treated as new foreign investments requiring authorization and registration [Art. 12]. But ANCOM governments may waive this authorization requirement for reinvestments of up to 5% of annual net profits [Art. 13].

The terms under which a foreign investment is authorized by the Control Office will be set forth in a formal agreement between investor and host government. The agreement must be filed with the Control Office when the investment is registered, and will include the "fade-out" terms.

These terms for new foreign investments are substantially the same as for existing investments, i.e. 15 and 20 years, respectively, for the two groups of ANCOM countries, except:

1. as noted above, new majority-owned foreign investments must enter into "fade-out" agreements [Arts. 25 and 30]. There are two exceptions to this rule.[17]
   a. new foreign investments in the mineral, pipeline and forestry sectors [Art. 40] are not subject to ordinary fade-out rules [Art. 39], presumably because their duration is uniformly limited to a maximum 20-year term of concession;
   b. new foreign investments in enterprises which export at least 80% of their total production to countries outside of the Andean Market [Art. 34].
2. Fade-out periods for new investments will generally start on the date of commencement of production (on the second anniversary of such date in the case of Bolivia and Ecuador) as compared with the Effective Date in the case of existing investments [Arts. 28 and 30].
3. The minimum divestment target for new foreign investments (other than the extractive minerals, pipelines and forestry sectors, in which it is presumably zero after twenty years [Art. 40]) is not more than 49% equity and proportionate management participation, i.e. a "mixed company"[18] (This differs from the minimum divestment target for existing foreign companies in certain economic key areas such as communications in which foreign ownership is to be less than 20%, i.e. conversion into a "domestic company" as defined in Art. 1 of the Code.)
4. Interim divestment targets are as follows: (percentages are those to be held by domestic investors):
   a. *for Chile, Colombia and Peru:*
      *15%*by commencement of production
      30% by completion of one third of fade-out period
      45% by completion of two thirds of fade-out period
   b. *for Bolivia and Ecuador:*
      5% by third anniversary of commencement of production
      10% by completion of one third of fade-out period
      35% by completion of two thirds of fade-out period

6. Restrictions on Borrowings and Repatriation

Existing as well as new foreign investments will be subject to uniform borrowing and repatriation restrictions under the Code.

a. Borrowings

Access to the local credit market by foreign companies will be limited to

[17]Investors availing themselves of these exceptions will nevertheless have to forego ANCOM benefits [Art. 44].

[18]If the new "mixed company" includes government participation, the foreign equity interest may be higher than 49%. The minimum percentage of government participation for this purpose will be set by the Commission within three months after the Effective Date. But the government must have management control of the "mixed company" in any event [Art. 36].

short-term borrowings, and then only in exceptional circumstances and in accordance with regulations to be issued by the Commission [Art. 17].

Borrowings from abroad require prior authorization from the Control Office which may also set maximum borrowings limits. Foreign loan agreements must be registered with the Control Office, and will serve as the basis for future remittance authorizations [Arts. 14 and 16]. Direct or indirect local government guaranties for borrowings by foreign companies in which the state is not an investor are prohibited [Art. 15].

The annual effective interest rate (i.e. interest plus commissions and other related expenses) payable by a foreign company to its foreign parents or other affiliates must not exceed three percentage points above the prime rate prevailing in the lending country. If that rate is payable to foreign non-affiliates, it will be set by the Control Office in close accord with conditions prevailing in the financial market of the lending country [Art. 16].

b. Repatriation

A translation of Art. 37 governing profit remittances abroad reads as follows:

> Subject to the prior approval of the competent national authority, foreign investors are entitled to transfer abroad, in freely convertible foreign exchange, proven net profits derived from direct foreign investment not in excess of *14%* per annum.
>
> If so requested by any member country, the Commission may authorize percentages higher than those specified in this article in special cases. (Emphasis

The Code also authorizes the remittance abroad of "repatriable" proceeds from the sale or liquidation of foreign investments [Arts. 7 through 11].[20]

"Repatriable capital" is defined as registered investment plus reinvestments in the same enterprises less net losses, if any [Art. 8].

Although Arts. 9 and 10 would appear to authorize the repatriation of profits from the sale or liquidation of foreign investments, Arts. 7 and 8 raise some doubts in this respect.

Art. 21 of the Code enjoins the remittance abroad of royalty and other similar technical assistance fees from ANCOM companies to their foreign parents or affiliates and their foreign parents or affiliates and also makes the

[19]The 14% ceiling on profit remittances abroad has been in effect in Colombia for some years.

[20]The price paid for a foreign investment by a foreign purchaser in domestic currency is apparently not "repatriable," even if such a sale has been authorized by the Control Office [Art. 7].

payment of such royalties and fees non-deductible for local tax purposes. It is not clear whether and to what extent this provision would apply to preexisting agreements.

Remittances are to be made at the rate of exchange prevailing on the date of the transaction ("giro"), which probably means the date of remittance rather than the date of the underlying transaction.[21]

7. Technology

A substantial portion of the Code is devoted to improving the terms under which foreign technology may be acquired, and to promoting the subregion's own technological development (Para. 6 of the Preamble).

a. Licensing Restrictions

As an initial step toward these objectives, all foreign patent and trademark licensing, as well as other technical assistance agreements, must be registered with the Control Office within six months after the Effective Date, [Arts. D and E].

All such agreements entered into after the Effective Date must also have the advance approval of the Control Office [Art. 6 f)]. Without this approval remittance of royalties in foreign exchange will not be permitted.[22] These transfers of intangible technology will not qualify as foreign capital contributions to ANCOM companies [Art. 21].

The clearance given by the Control Office will depend on its estimate of the foreign technology's contribution to incremental profits [Art. 18].

To facilitate this estimate, licensing agreements with ANCOM firms will have to contain the agreed price for each element of technology involved in the proposed transfer [Art. 19 b)].

As a rule, no foreign patent or trademark licensing agreement will be authorized if it provides for:

> a. tying arrangements with foreign products or supplier's personnel on a permanent basis. Exceptions for tying purchases may be authorized by recipient governments only on the basis of prevailing prices in the international market [Arts. 20 a), 25 b) and e)];
>
> b. any restriction on the export of licensed products or similar goods. Exceptions for products under patent licenses may be made by the Control Office if such exceptions do not cover exports of licensed products to ANCOM countries and of similar goods to non-ANCOM countries [Arts. 20 and 25 a)];

[21]The author understands that the word "giro" is translated as "remittance" in the ANCOM Junta's unofficial translation of the Code.

[22]As noted above, the Code prohibits remittance of royalties and similar technical assistance fees from ANCOM companies to their foreign parents or affiliates [Art. 21].

c. fixing sale and resale prices of licensed products by the licensor [Arts. 20 b) and 25 c)];
d. payment of royalties for unused patents [Art. 20 g)] and trademarks [Art. 25 d)];
e. any provisions similar to the foregoing [Arts. 20 h) and 25 f)];
f. transfer of jurisdiction over disputes arising out of such agreements to courts outside of licensee's country or subrogation of the foreign licensor by the latter's government [Art. 51].

The Code also prohibits the following clauses in patent or know-how transfer agreements:

i. restriction on volume and structure of output [Art. 20 c) ;
ii. prohibition of the use of competing technology [Art. 20 d)];
iii. total or partial purchase options in favor of the supplier of the technology [Art. 20 e)
iv. flowback provisions covering discoveries and improvements [Art. 20 f)].

Further restrictions may be imposed under Art. 26 which authorizes the Commission to pass on the treatment of foreign patents already registered in the ANCOM countries, and under Art. 25 which allows the Commission to recommend that member countries impose surcharges on products covered by foreign trademarks which could be manufactured locally with technology in the public domain [Art. 24].

b. Development of Local Technology

The Commission is given broad powers under the Code for promoting technological development in the Market.

A full-scale program for mobilizing the member countries' technological resources is to be adopted by the Commission by November 30, 1972. To this end, special tax and other benefits will be granted to investments in subregional or national research centers for exports to third countries based on local technology [Art. 23].

Within six months from the Effective Date, the Commission is to adopt a new Industrial Property Law for the Market and to issue regulations for the establishment of a Subregional Industrial Property Office [Arts. F and G].

The proposed Industrial Property Law will indicate the products patentable in the member countries because they are needed for the development of the Market [Art. G and Annex 2 e) and m)].

The Commission may rule certain production processes, products or product groups to be unpatentable in the member countries [Art. 26].

The Subregional Industrial Property Office will serve primarily as an advisory and liaison office for the respective offices of the member countries. Somewhat similar to the Japanese Government's foreign trade office, it might become the member countries' joint negotiating vehicle for foreign licenses and other technological imports [Arts. 22, 48 and 55].

Until adoption of the Industrial Property Law for the Market, the member countries are to refrain from entering into industrial property agreements with third countries [Arts. C and G].

8. Agreements Among ANCOM Member Countries

Within three months after the Effective Date, the Commission is to adopt rules governing investments by ANCOM nationals in member countries of the Market other than their own. Other regulations to be issued within that period will deal with investments by CORANFO, the Andean Development Corporation [Art. I].

Art. H of the Code provides that the ANCOM countries will refrain from amending their foreign industrial investment laws after the Effective Date, pending coordination of such laws under Art. 28/2 of the Cartagena Agreement.[23] Prior to November 30, 1972 the Commission will take the necessary steps for coordinating the incentive laws in the non-industrial sector.

The Commission is to approve a treaty for the avoidance of double taxation among member countries by November 30, 1971. By that time the Commission is also scheduled to prepare a form of double tax treaty to be entered into between ANCOM and third countries. Until both of these measures have been taken, member countries will refrain from making commitments on tax matters with non-ANCOM countries [Art. 47].

By the end of 1971 the Commission is also expected to issue rules for the treatment of multi-national enterprises[24] in the Market under Art. 28 of the Cartagena Agreement.

Disputes among member countries arising out of the interpretation and enforcement of the Code are to be resolved by arbitration in accordance with the Protocol for the Resolution of Controversies, signed by the Foreign Ministers of the LAFTA countries in Asuncion on September 2, 1967 [Art. 51 referring to Art. 23 of the Cartagena Agreement]. No provisions for the enforcement of such arbitral decisions are contained in either the Cartagena Agreement or the Code.

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[23]A reasonably successful precedent for such coordination was set by the Central American Agreement on Fiscal Incentives to Industrial Development of July 31, 1962, translated in Inter-American Institute of International Legal Studies, *Instruments Relating to the Economic Integration of Latin America* 199 (1968).

[24]While this term is as yet undefined, Business International Corporation in "*The Andean Common Market*" (Dec. 1970) states it may mean companies formed under an ANCOM charter which are majority- or wholly-owned by ANCOM nationals and operate in several ANCOM countries.