THE ANDEAN FOREIGN INVESTMENT CODE: AN OVERVIEW*

I. INTRODUCTION

During the latter half of the nineteenth century investors from the United States and Western Europe were attracted to the undeveloped resources and markets of Latin America. However, investing experience with unstable Latin American governments soon led to conservative investment tactics, with agriculture and the extractive industries becoming the focal point of foreign investment. After World War II there were two major shifts in investment policy. Initially there was a focus shift to manufacturing, and secondly, as European investors turned their capital and energies to the task of rebuilding their war-ravaged continent, direct capital investment by enterprises controlled by the United States increased dramatically.

The 1960's were to have been years of rapid development and growth in Latin America. The Alliance for Progress was based upon the notion that growth in Latin America could best be obtained by the encouragement of direct foreign investment to supplement local capital resources. During this same period the Latin American Free Trade Association (LAFTA) was formed to increase uniformly regional trade throughout Latin America by the reduction and elimination of intraregional trade barriers. However, LAFTA's failure to provide economic planning for coordinated distribution of direct foreign investment, promoted by the Alliance for Progress, re-

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2 Id. at 461.
3 Id. at 462.
4 From 1946 to 1959, investment in United States-controlled enterprises abroad increased value from $7.2 billion to $29.7 billion, and of this increase over $6.0 billion, or almost 27%, flowed to Latin America. Id. at 462.
7 The policy behind such a notion was the expectation that private investment could help Latin American countries achieve higher standards of living, thereby undermining the appeal of the more radical nationalists, without incurring the political risks or social turbulence which foreign aid assistance might engender. Jova, supra note 1, at 463.
9 Id. art. 2.
sulted in the gravitation of those funds towards the more developed Latin American nations. Thus, under LAFTA, Argentina, Brazil and Mexico widened their existing lead over the smaller nations of Latin America in the area of industrial development.

The bellicose and restrictive attitude of Latin American nations toward foreign investment began with a rejection of their “dependency” upon the technologically advanced investing nations. The proponents of this “dependency theory” argue that foreign investors usually displace national investors in manufacturing and other important economic sectors. “Dependency” theorists also contend that foreign investors have the advantage when bargaining with host countries, since they are usually free to relocate their enterprises (with its concomitant employment capacity) should they become dissatisfied with the “investment climate” in a particular host country, resulting in excessive concessions being made by the host country. Therefore, the “dependency” theorists concluded that Latin American nations realized that their goal of development could not be adequately met until this antidevelopmental effect was neutralized. This could be accomplished by a coordination of development goals and foreign investment, which will occur when local interests enjoy greater participation in and control over foreign enterprises.

Others argue it was the success, not the failure (as the dependency theorists argue), of past patterns of foreign investment that has given rise to the restrictive policy of Latin American nations toward foreign investment. It is contended that industrial and social progress, due in large measure to past patterns of foreign investment, has given Latin Americans the technical knowledge and industrial power to demand that attention be paid to their developmental priorities.

Regardless of its validity, the “dependency theory” has had a substantial effect upon the recent policies of the less developed Latin American nations with respect to foreign investment. While under LAFTA, Argen-

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10 Note, Political Components and Practical Effects of the Andean Foreign Investment Code, 27 STAN. L. REV. 1597, 1598 (1975) [hereinafter cited as Note, AFIC].
11 Id. at 1599.
12 Jova, supra note 1, at 469-70.
13 Id. at 470-73. Latin America’s ultimate goal, according to the theory, is to improve the standard of living and social well-being of its people through industrialization. But this goal must be achieved in such a way that the standard of living is raised for substantial segments of the population. Income distribution is to be as broad as possible and their economies are to achieve sufficient strength to allow them to compete fully on their own as exporters of manufactured goods. Until then, they will be “dependent” on economic forces outside their control. Id. at 471.
14 Id.
15 Id. at 472.
16 Id. at 473.
17 Id. at 456.
18 Id.
19 Id. at 473-76. Perhaps the most fundamental change has been the shift from a passive
tina, Brazil and Mexico increased intraregional exports, the less developed
nations saw their intraregional trade deficit triple,\textsuperscript{29} creating a fear of growing
dependency not only upon the United States and Western Europe, but
also upon the more developed nations in Latin America.\textsuperscript{30} It was this fear
that led the less developed Andean countries of Bolivia, Chile, Colombia,
Ecuador and Peru (later joined by Venezuela) to form the subregional
Andean Common Market (ANCOM).\textsuperscript{31}

II. THE ANDean COMMON MARKET (ANCOM)

Established by the Agreement of Cartagena,\textsuperscript{32} ANCOM was created with
the approval of LAFTA to function as an entity within the free trade area.\textsuperscript{33}
There are, however, important differences between ANCOM and LAFTA.
While LAFTA focused on a policy of trade liberalization under which
participating countries exchange tariff concessions,\textsuperscript{34} ANCOM focuses on
regional development-planning within a common market framework.\textsuperscript{35} The
nations participating in ANCOM have an obligation to automatically
eliminate barriers to trade among themselves by the end of 1980\textsuperscript{36} and to
create a common external tariff by the end of 1980.\textsuperscript{37} The major legal barrier\textsuperscript{38}
to the formation of ANCOM was removed when LAFTA agreed
to permit subregional tariff reduction agreements among LAFTA's mem-
bers.\textsuperscript{39} It was decided that there was no obligation under LAFTA to extend
the benefits of subregional tariff reductions to countries not parties to the
subregional agreement, despite LAFTA's most-favored-nation policy.\textsuperscript{40}

The Cartagena Agreement established a Commission and a Board as the
principal organs of ANCOM.\textsuperscript{41} The Commission is composed of representa-

to an active posture at the investment banking table. No longer merely concerned to ensure
national sovereignty, protect the national patrimony and prevent flagrant abuses, Latin
American leaders are confronting potential investors with an expanding notion of exactly how
foreign private capital should fit into national development plans and contribute toward their
realization. \textit{Id.} at 473.
\textsuperscript{29} Note, AFIC, supra note 10, at 1598-99.
\textsuperscript{30} Valdez, \textit{The Andean Foreign Investment Code: An Analysis}, 7 J. INT'L L. & ECON. 6
(1972) [hereinafter cited as Valdez].
\textsuperscript{31} Note, AFIC, supra note 10, at 1599.
MAT'LS 910 (Sept. 1969) [hereinafter cited as Agreement of Cartagena].
[hereinafter cited as Lisocki].
\textsuperscript{34} \textit{Id.} at 318.
\textsuperscript{35} \textit{Id.} at 319.
\textsuperscript{36} Agreement of Cartagena, supra note 23, at 921, art. 45.
\textsuperscript{37} \textit{Id.} at 926, art. 61.
\textsuperscript{38} Treaty of Montevideo, supra note 8, art. 1. The stumbling block to any subregional
agreement among LAFTA's members was the Treaty's ban on subregional tariff reduction
agreements in article 1.
\textsuperscript{40} \textit{Id.}
\textsuperscript{41} Agreement of Cartagena, supra note 23, at 911-15, arts. 5-18.
tives from each member country, and the Board, which is the secretariat of ANCOM, is headed by three individuals unanimously selected by the Commission. The Board is to represent the general community interest and must make its decisions unanimously. By contrast the Commission may, in most cases, act by a two-thirds vote of its members.

III. **ANDEAN FOREIGN INVESTMENT CODE**

**A. Classification of Enterprises**

Decision 24 of the Commission, which establishes the Andean Foreign Investment Code, adheres to the view that a common policy toward foreign investments is a prerequisite to successful economic integration. Article 1 of the Code establishes three categories of business enterprises which serve as the basis of a complex system of privileges and protections to be applied to each of the different types of business enterprise. The three categories are: (1) the "national enterprise" in which more than 80 percent of the capital and management control belongs to "national investors;" (2) the "mixed enterprise," in which national investors control from 51 percent to 80 percent of the enterprise's capital and management and (3) the "foreign enterprise" in which national investors own less than 51 percent of the capital.

**B. Registration**

Article 2 of the Code requires foreign investors who wish to invest in one of the member countries to submit an application to the "competent national authority" of the prospective host country and to obtain from that

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31 Id. at 911, art. 6.
32 Id. at 913, arts. 3, 13.
33 Id. at 915, art. 17.
34 Id. at 912, art. 11.
37 Andean Foreign Investment Code, supra note 37, at 129.
38 Id. at 128, art. 1.
39 National investors are defined as the State, national individuals and enterprises and foreign nationals with at least one year consecutive residence in the host country who renounce their right of transfer abroad. Id. at 129, art. 1.
40 Id. at 129. In addition, article 1 provides that a mixed enterprise shall be considered Foreign if national investors exercise less than 51 percent management control, irrespective of the capital ownership.
41 Id. A firm may be classified as mixed, despite foreign ownership of over 50 percent, only if (a) the State or a State enterprise is the minority owner, and (b) if the State, despite minority ownership, has a determining voice in the management of the firm. Id. at 138, art. 36.
42 The "competent national authority" will be a designated agency of each member government. Valdez, supra note 21, at 7 n.35.
authority an authorization to invest.\textsuperscript{45} In evaluating the application, the competent national authority must consider whether the proposed investment corresponds to the development priorities of the recipient nation.\textsuperscript{46} Under article 3, the national authority is directed to refrain from authorizing foreign investment in areas of the economy which it thinks are already adequately covered by existing business enterprises.\textsuperscript{47} Furthermore, a foreign investment is not to be authorized if the purpose of that investment is to acquire shares in an existing national enterprise, unless the competent national authority certifies that the investment is the only means of preventing the bankruptcy of the national enterprise, and that national and subregional investors were given the first opportunity to acquire equity in the enterprise.\textsuperscript{48}

The registration and authorization requirements of the Code not only restrict foreign investment in local enterprises,\textsuperscript{49} but by favoring local enterprises tend to insure that ownership, once acquired by nationals, will remain in the hands of national or subregional investors. Another important facet of these requirements is the discretion given to the competent national authority of each country. However, this broad discretion to interpret the Code’s requirements seems contrary to the expressed goal of arriving at a uniform policy on incentives and controls for foreign investment.\textsuperscript{50}

C. Transformation to Local Control

One of the most controversial aspects of the Code is the attempt to encourage transformation of foreign enterprises into either mixed or national enterprises.\textsuperscript{51} Article 27 limits the advantages of duty-free trade in ANCOM to products produced by national enterprises, mixed enterprises, and foreign enterprises in the process of being transformed into national or mixed enterprises pursuant to the provisions of the Code.\textsuperscript{52}

Article 28 allows foreign enterprises existing as of June 30, 1971, three years to sign an agreement of transformation pursuant to article 31 with the competent national authority of the host country.\textsuperscript{53} At the end of the three year period, regardless of whether gradual transformation to local control was opted for, national investors have to own at least 15 percent of

\textsuperscript{45} Andean Foreign Investment Code, supra note 37, at 129, art. 2.
\textsuperscript{46} Id.
\textsuperscript{47} Id. at 129, art. 3.
\textsuperscript{48} Id.
\textsuperscript{49} Andean Foreign Investment Code, supra note 37, at 129.
\textsuperscript{50} Id. at 135-36, art. 28.
\textsuperscript{51} Note, AFIC, supra note 10, at 1602-04.
\textsuperscript{52} Andean Foreign Investment Code, supra note 37, at 135, art. 27.
\textsuperscript{53} Id. at 135-36, art. 28.
the capital of the enterprise. The transformation of the enterprise to mixed or national status must be carried out within 15 years of the date the Code became effective (June 30, 1971) in Colombia, Chile and Peru, and within 20 years after the date in Bolivia and Ecuador. Upon expiration of two-thirds of the period for transformation, national investors must own at least 45 percent of the capital of the enterprise.

Under the provisions of article 30, foreign enterprises organized in the ANCOM member countries after the effective date of the Code will not be given an option in the matter of transformation. Eventual transformation to mixed ownership is mandatory, but ownership by subregional investors and the Andean Development Corporation, the subregional development bank owned by the member countries of ANCOM, is counted as national ownership. The transformation to mixed enterprise status must be completed within 15 years after production begins if the new enterprise is located in Colombia, Chile and Peru, and there must be at least 15 percent national ownership at the time production begins. Furthermore, at the end of one-third of the agreed transformation period, there must be at least 30 percent national ownership, and at least 45 percent national ownership at the end of two-thirds of the agreed period.

New enterprises in Bolivia and Ecuador are given three years after production begins to achieve five percent national ownership, and are given 22 years after production begins to transform to 51 percent national ownership. In these two countries, at the end of one-third of the agreed period for transformation there must be 10 percent national ownership and at least 35 percent national ownership upon completion of two-thirds of that period. The more lenient provisions for the transformation of enterprises located in Ecuador and Bolivia are designed to help these less developed countries attract investors.
Several economic sectors are accorded special treatment under the transformation provisions of the Code. Article 38 allows each member country to reserve sectors of economic activity for national enterprises.\textsuperscript{68} Article 40 exempts foreign enterprises operating in the basic products sector (the exploitation of minerals and forests) from the requirement of transformation during the first 10 years of the Code\textsuperscript{69} and provides that such foreign enterprises may enter the subregion under concession contracts if the duration of each concession contract is no longer than 20 years.\textsuperscript{70} This exemption appears to be a special grant to the largest and most profitable sector of the Andean economy.\textsuperscript{71}

Article 41 provides that neither the establishment of foreign enterprises nor new foreign investment will be permitted in the public services sector, \textit{i.e.}, telecommunications, water, and electric power.\textsuperscript{72} Under the provisions of article 42, no new foreign investment is to be permitted in the financial sector, \textit{i.e.}, banking and insurance.\textsuperscript{73} Existing foreign banking enterprises are given three years after the effective date of the Code to become national enterprises, and if they did not choose to do so, they are not permitted to accept local deposits after the end of that three year period.\textsuperscript{74} Similar restrictions are placed upon foreign-owned domestic transportation enterprises, advertising enterprises, television and radio stations, magazines and newspapers.\textsuperscript{75}

Article 44 allows the member countries to abrogate the restrictions in articles 41 through 43.\textsuperscript{76} This escape clause adds needed flexibility in the event that local technological and managerial skills prove insufficient to effectively operate a restricted sector of the economy. There is, however, a danger that this provision will be used to treat foreign investors more favorably in one country than in others.\textsuperscript{77}

Although the transformation requirement of the Code is a useful tool for putting control of local industry into the hands of local investors (and certainly more palatable to foreign investors than expropriation), there are problems with the approach. First, there is some doubt about the ability of local investors to supply the tremendous amounts of capital needed to acquire the equity to transform investments into national and mixed enterprises.\textsuperscript{78} The Code offers no constructive solution to the problem presented

\textsuperscript{68} Andean Foreign Investment Code, \textit{supra} note 37, at 138, art. 38.
\textsuperscript{69} \textit{Id.} at 138-39, art. 40.
\textsuperscript{70} \textit{Id.}
\textsuperscript{71} Valdez, \textit{supra} note 21, at 10.
\textsuperscript{72} Andean Foreign Investment Code, \textit{supra} note 37, at 139, art. 41.
\textsuperscript{73} \textit{Id.} at 139, art. 42.
\textsuperscript{74} \textit{Id.}
\textsuperscript{75} \textit{Id.} at 139-40, art. 43.
\textsuperscript{76} \textit{Id.} at 140, art. 44.
\textsuperscript{77} Valdez, \textit{supra} note 21, at 10-11.
\textsuperscript{78} Furnish, \textit{The Andean Common Market’s Common Regime for Foreign Investments}, 5 \textit{VAND. J. TRANSNAT’L L.} 313, 329 (1971-72) [hereinafter cited as Furnish].
if a firm cannot sell the requisite shares to accomplish transformation within the agreed period. There are also loopholes in the transformation provisions. Article 34, for example, exempts foreign enterprises from all transformation requirements if they export more than 80 percent of their output to non-Andean countries. Here, as in the exemption for enterprises operating in the basic products sector, there appears to be a special concession to a large and profitable sector of the Andean economy.

D. The Reinvestment and Repatriation of Capital

The reinvestment and repatriation of capital are restricted under article 37, which limits the annual profit from the ANCOM nations to 14 percent of the value of the foreign enterprise, all of which may be repatriated to the home company. Foreign enterprises wishing to reinvest any portion of their profits are subject to article 12 which provides that reinvestment of these profits is to be considered foreign investment. Thus, article 13 requires registration and authorization of all reinvested annual profits in excess of five percent of the enterprise's capital base.

The provisions concerning reinvestment and repatriation of capital raise several unanswered questions with the result that each member country of ANCOM has a great deal of discretion. First it is not known whether the 14 percent repatriation limit and the five percent reinvestment limit are to be applied to profits before or after tax is withheld. Furthermore, it is not yet known whether the reinvestment of profit will be allowed to increase the capital base of an enterprise for the purpose of computing reinvestment and repatriation limits. If reinvestment is allowed to increase the capital base of an enterprise, the problem of transformation is aggravated because local investors must produce the capital needed to acquire 51 percent of an enterprise that grows at the rate of five percent (or more if greater reinvestment is authorized by the host country) each year. As already noted, the Code provides no solution to the problem created if local investors fail to produce the needed capital. Finally, the...
Code does not specify what is to be done with profits which cannot be reinvested or transferred from the subregion. Thus, in the areas of reinvestment and transfer of profits, the Code leaves open many basic questions which must be answered by each member of ANCOM. This creates an opportunity for each country to make itself more attractive to foreign investors than the other ANCOM members.

Harsh restrictions are placed on the use of domestic credit by foreign investors in article 17. Foreign enterprises will have access only to short-term domestic credit, and then only in accordance with the terms specified in regulations set forth by the Commission. Article 14 requires enterprises to obtain the authorization of the competent national authority prior to contracting for foreign credit.

In an effort to prevent excessive transfers of profit under the guise of interest payments on intercompany debt, article 16 states that the annual interest payments on such loans “may not exceed by more than three points the rate of interest of first class securities prevailing in the financial market of the country of origin of the currency in which the transaction is registered.” In addition, article 20 prohibits member countries from authorizing contracts for the transfer of technology which would have the effect of allowing excessive transfers of profit from member countries.

IV. Implementation

To gain a better understanding of the impact which the Code has had on foreign investment in ANCOM, an examination of its legal status in each of the member countries is necessary, especially in view of the broad discretion given to the member countries.

Since the members are granted distinct advantages under the Code, one might expect them to be leaders in its implementation; however, this has not been the case. The Ecuadorean Government merely incorporated the Code into its national law utilizing the escape clause of article 44 to avoid the

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* Council of the Americas, supra note 85, at 95.
* Andean Foreign Investment Code, supra note 37, at 132, art. 17.
* Id.
* Id. art. 14; see note 44 supra.
* Id. art. 16.
* Id. at 133, art. 20. As where contracts between the foreign parent corporation and the domestic subsidiary contain clauses which require the subsidiary to purchase from the parent capital goods, intermediate products or raw materials used in the application of the technology, being sold by the parent to the subsidiary at prices which are artificially high.
* Fouts, supra note 58, at 540. Articles 28 and 30 specify the time limits in which foreign investors must transfer a majority of the shares of their enterprises to national investors. Under these articles, Bolivia and Ecuador are given longer periods for the transformation to be consummated in recognition of their special status as the least-industrialized members of ANCOM.
* Id. at 540-43.
abrogate the restrictions placed on various sectors of the economy (primarily the financial and public service sectors) by articles 41 through 43 of the Code.87 The Bolivian Government enacted the Code with the various exceptions allowed under article 44, and also indicated that it would not force new enterprises producing only for the Bolivian market to transform to 15 percent national ownership.88 Even a strict implementation of the Code in Bolivia would have little effect on foreign investment because most Bolivian industries are extractive in nature and would be exempted from the provisions of the Code.89

In Colombia, the Code was made a part of national law by presidential decree100 on the theory that approval by the Colombian Congress of its entry into LAFTA vested in the President the power to approve participation in subgroups of LAFTA.101 A court action102 was brought challenging the constitutionality of the presidential decree in the absence of explicit legislative ratification. The Supreme Court on January 20, 1972, recognized the power of the President to implement international agreements by executive agreements, but held that the Code was a matter of domestic concern requiring legislative approval.103

To assure Colombian compliance with the Code until it could be ratified by Congress, President Pastrana by decree brought Colombia's requirements for the registration of foreign investments into substantial conformity with the Code.104 On March 21, 1973, the Congress approved Colombia's entry into ANCOM,105 and also gave President Pastrana the authority to enact by presidential decree any of the decisions (resolutions) adopted by the ANCOM Commission.106 Soon afterward, the President incorporated the Code into national law,107 with banks and companies engaged in the extractive industries being exempted from the Code's restrictions.108

In contrast with Colombia's efforts to accommodate the Code, the military government which replaced the Allende Government in Chile has tried to

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87 Note, AFIC, supra note 10, at 1612 n.73.
88 Id. at 1612 n.74; Fouts, supra note 58, at 541.
89 Fouts, supra note 58, at 542.
100 Note, AFIC, supra note 10, at 1613. Colombia's President Pastrana chose to promulgate the Code by issuing Decree Law 1299, on June 30, 1971, followed on November 4, 1971 by a regulatory law known as Decree Law 2153.
101 Id. at 1613-14. See Schliesser, Recent Developments in Latin American Foreign Investment Laws, 7 INT'L LAw. 357, 371 (1973).
102 Note, AFIC, supra note 10, at 1614 n.80 and accompanying text.
103 Id. at 1614 n.82. See Andean Pact Constitutionality: A Final World From Colombia, 7 LAWYER OF THE AMERICAS 614 (1975).
104 Note, AFIC, supra note 10, at 1614. This action was pursuant to his authority under the 1967 exchange control laws: Decree Law 444 and its companion statute 688. Id. at 1614 n.84 and accompanying text.
105 Id. at 1614-15. Congress passed Law 8, ratifying Colombia’s adherence to ANCOM.
106 Id.
107 Id. at 1615 n.89 Decree Law 1900.
108 Id. at 1615 n.90.
escape the Code's restrictions on foreign investments. The military government sees the Code, which was adopted by the Allende Government,\(^9\) as an obstacle to its all-out effort to attract new foreign investment. In 1974 Chile passed a new national foreign investment law.\(^{10}\) The other members of ANCOM saw this national legislation as an effort to ignore the Code's restrictions and passed a resolution declaring it to be a violation of the Code.\(^{11}\) In response, Chile quickly assured the other members of ANCOM that it would enforce the Code as adopted despite its displeasure with many of the terms imposed upon foreign investors by the Code.\(^{12}\) Thereafter, it became apparent that Chile would lobby for modifications in the Code.\(^{13}\)

In Peru, the Code's predilection for state participation and industrial planning were not unfamiliar since those features were reflected in the Peruvian General Law on Industries\(^{14}\) already in effect.\(^{15}\) Although the Peruvian Government utilized the escape clause of article 44, it enacted national regulations which were much more demanding upon the sectors involved than the Code would have been.\(^{16}\) For example, foreign owned banks were given a 60 day period, rather than the three year period specified by the Code, to transform their capital structure to 80 percent Peruvian ownership.\(^{17}\) Peru went beyond mere adherence to the Code by establishing the mechanism by which transformation of foreign firms to national ownership is to be accomplished.\(^{18}\) Industrial communities (employee organizations) were to be formed by each firm to receive 15 percent of its

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\(^9\) Fouts, supra note 58 at 547. The Code was ratified by Chile by Decree Law 482, issued on June 30, 1971.

\(^{10}\) Id. at 548.

\(^{11}\) Id. On July 13, 1974, the Chilean Government issued a new national foreign investment law, Decree Law 600, which required all new foreign investors to negotiate contracts with the government. The Decree made no mention of the Code and thus left some doubt as to the Code's validity in Chile.

\(^{12}\) Id. at 548-49. Comision del Acuerdo de Cartagena, Decimoguinto Periodo de Sesiones Ordinarias, 10 a 14 y 19 a 20 de Septiembre, 1974—Acta Final.

\(^{13}\) Id. At the November 1974 meeting of ANCOM commissioners, the Chilean Government representative announced that his government had issued Decree Number 746 which specifically recognized that the Code was in effect in Chile and designated the governmental agency established to administer Decree 600 as the competent national body charged with applying the Code in Chile.

\(^{14}\) Id. At the same November meeting, see note 113 supra, the Chilean Government signaled its continued displeasure with the terms of the Code, particularly the 14 percent of investment value limitation on profits and indicated that it would continue to lobby for changes in the Code.


\(^{16}\) Id. at 549-50.

\(^{17}\) Fouts, supra note 58, at 551-54.

\(^{18}\) Id. at 552.

\(^{19}\) Id. at 551. Decree Law 18999 established that transfer of shares to the enterprise's industrial community, i.e., a cooperative formed by all the workers in an industrial facility, was the principal mechanism by which national ownership was to be accomplished.
annual net pretax income to be used by the community to buy into the firm. The shares of a firm may also be transferred to its industrial community under an agreement that dividends from the shares transferred will be used to amortize the purchase price of the shares. Although Peru's plan for transformation may be regarded as harsh, it has the advantage of being definite, which gives rise to a consistent policy.

When Venezuela finally ratified the Code in 1973, most observers felt that private sector opposition to the Code would lead to a liberal interpretation of the Code and to full use of the escape clause in article 44. However, the Venezuelan economy radically changed during the period it was formulating their policy for application of the Code. World oil prices quadrupled, placing Venezuela in a position of wealth, and creating a freedom to take the "hard line" approach to foreign investment which results from rigid adherence to the provisions of the Code. Perhaps the key factor in the decision to implement the Code strictly was that the acquisition of stock in foreign firms was seen as a place for Venezuela to store its oil wealth. To date, however, there has been no program for government financing of the acquisition of stock in foreign firms.

It is still too early to assess the total impact the Code has had upon foreign investment in the ANCOM countries. There was harsh criticism at first, and opponents in the private sector still see the Code as an unnecessary restriction on foreign investment. A parent corporation which knows that it will soon become a minority partner, it is argued, is not likely to supply advanced technology to a future competitor. The trend however, appears to be toward the acceptance of the restrictions of the Code. Although investors in the United States have been slower to accept these restrictions than investors in Japan and Western Europe, it is highly unlikely that businessmen in the United States will surrender their leadership in a market of more than 46 million people.

V. Conclusion

The common regional policy on foreign investment called for in the Cartagena Agreement has not materialized, because each member country

117 Id.
118 Note, AFIC, supra note 10, at 1616-17 n.95.
119 Fouts, supra note 58, at 554. This was accomplished by Venezuelan Law 26 of that date, effective January 1, 1974, passed September 3, 1973.
120 Id. at 550.
121 Id.
122 Id. at 555.
123 Id.
124 Id.
125 Id. at 550.
126 Id. at 1616-17 n.95.
127 Note, AFIC, supra note 10, at 1618.
128 Lisocki, supra note 24, at 330.
129 Note, AFIC, supra note 10, at 1618-22.
130 Id.
131 Id. at 1620.
of ANCOM applies the Code with an eye toward securing its maximum national advantage.\textsuperscript{132} Some have given the Code a liberal interpretation to gain an advantage in attracting foreign investment.\textsuperscript{133} Others have taken the "hard line" approach to absorb natural resource-generated wealth and to gain the respect of underdeveloped nations throughout the world.\textsuperscript{134} Nevertheless, the Code is seen as a binding international commitment, and every member of ANCOM has recognized its duty to make national practices with respect to foreign investment conform to the basic principles set forth in the Code. Even Chile, which now views the Code as a serious obstacle to its efforts to attract foreign investors, has made its national laws on foreign investment conform to the Code.\textsuperscript{135} Worldwide economic conditions are quite different today from those existing at the time the Code was drafted. The 14 percent across-the-board ceiling on profit remittances, reasonable in 1969, is perhaps unrealistic today. If the members of ANCOM want to attract foreign investment they should remember that investors must be given incentives to enter the area. Fair treatment, political stability, and a chance to realize a fair return on capital investment are incentives that can overcome the various restrictions imposed by the Code. The willingness and ability of the members of ANCOM to offer such incentives will determine its success.

\textit{Lloyd Pike}

\textsuperscript{132} Andean Foreign Investment Code, \textit{supra} note 37, at 129, art. 2.

\textsuperscript{133} Fouts, \textit{supra} note 58, at 543-49. These include Colombia and Chile.

\textsuperscript{134} \textit{Id.} at 549-56. These are Peru and Venezuela.

\textsuperscript{135} See note 113 \textit{supra}. 