



Covered Region
Latinamerica

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ANDEAN COMMUNITY

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THE ANDEAN COMMUNITY OF NATIONS

BACKGROUND

On May 26, 1969, the Cartagena Agreement was formally signed, which is also known as the Andean Pact. The signatory countries (Bolivia, Chile, Colombia, Ecuador, Peru) set forth the grounds for going ahead towards the creation of a sub-regional community. In 1976 Chile withdrew from the Cartagena Agreement and Venezuela then enters the community.

Due advances attained as to integration and new challenges derived from changes in world economy, in September 1995 a strategic re-organization was agreed as aimed at Andean integration, and on which occasion the need to amend the Cartagena Agreement was discussed.

In March 1996, in Trujillo, Peru, the integration process was given a political direction. The Trujillo Protocol replaced the Andean Pact by the Andean Community of Nations (CAN). This Protocol approved certain amendments to the original agreement and set the legal bases for the Andean Integration System, which gathers the bodies and institutions of the integration process.

As from August 1, 1997, The Andean Community started activities with a General Secretariat as executive body and with headquarters in Lima (Peru). The Council of Presidents and the Council of Foreign Ministers were formally established as new policy-making and leading bodies.

ANDEAN COMMUNITY OF NATIONS

The Andean Community of Nations (CAN) is a sub-regional organization with an international legal capacity, constituted by five country-members, namely, Bolivia, Colombia, Ecuador, Peru and Venezuela, and which comprises the bodies and institutions of the Andean Integration System (SIA)

ANDEAN INTEGRATION SYSTEM

The Andean Integration System (SIA) consists in a group of bodies and institutions operatively related to each other and which acts are intended to achieve the same objectives: to reach a well-conceived Andean sub-regional integration, to promote its external projection and to strengthen the actions related to the integration process.

The SIA bodies and institutions are the following:

Andean Council Presidents. - This is the highest body within the Andean Integration System and is formed by the head of states of the country members within the Andean Community. This body issues guidelines about the different fields of Andean sub-regional integration.

Andean Council Ministers of Foreign Affairs. - This body is in charge of making, executing and evaluating general policies related to the Andean sub-regional integration process, a task which is jointly performed with the Commission. This body is formed by the Ministers of Foreign Affairs of the Andean Community country members and issues Statements and Decisions adopted on consensus.



General Secretariat.- This is the executive body of the Andean Community and gives technical support to the other bodies and institutions of the Andean Integration System. The General Secretariat is managed by the General Secretary and actions and decisions are made known by Resolutions. The headquarters of the General Secretariat is located in the city of Lima, Peru.

The Commission.- This is the body in charge of making, executing and evaluating the general policy of the Andean sub-regional integration process concerning trade and investments and, when necessary, such activities are carried out jointly with the Andean Council Ministers of Foreign Affairs. This Commission is made up by a plenipotentiary representative of each of the governments of country members. The criteria applied by the Commission are known through Decisions.

Andean Court of Justice.- This is the judicial body of the Andean Community, which is comprised of five Judges, each representing one of the Member Countries, and has territorial jurisdiction in the five countries. This is governed by the Treaty that created the same, by amendatory protocols and the Cartagena Agreement. The permanent headquarters of the Andean Court of Justice is located in Quito – Ecuador.

Andean Parliament.- This is the deliberative body of the Andean Integration System and is formed by representatives of the National Congresses, though, however, in the near future, its members will be elected by direct and universal vote.

Conventions.- These are intergovernmental institutions created to complement integration efforts in the economic and trade sectors with actions in other fields. Thus, the Andrés Bello Convention was created to promote educational, technological and cultural integration; the Hipólito Unánue Convention was aimed at supporting the countries' efforts to improve their peoples' health; and the objective of the Simón Rodríguez Convention was to promote social and labor integration.

Andean Development Corporation and Latin American Reserve Fund.- These are the financial institutions of the System, which aim is to promote the Andean sub-regional integration process.

The Andean Business Advisory Council and Andean Labor Advisory Council- These are the advisory institutions within the Andean Integration System. They issue their opinion on programs or activities for the Andean sub-regional integration process, which may be of interest to their respective sectors. They are made up by the representatives of the business and labor sectors of each country members.

Simon Bolivar Andean University.- This is the institution of the Andean Integration System that is devoted to research, teaching, post-university training and the rendering of services, as well as to promoting a spirit of cooperation and coordination among universities of the sub-region. Its main campus is located in Sucre, Bolivia.

CAN OBJECTIVES

The strategies set forth by the community guidelines will be directed to, among others, the following general objectives:

- Promoting the balanced and harmonical development of country members under equitable conditions, by the economic and social integration and cooperation, accelerating development and the generation of labor positions in country members, facilitating their

participation within the process of regional integration with an aim to the gradual creation of a Latin American common market.

- Harmonizing economic policies by adjusting them to a sustainable development and the achievement of efficient social policies, so as to thus tend to reduce external vulnerability and to improve the position of country members within the international economic context, to reinforce sub-regional solidarity and reduce existing development differences among country members.
- Becoming a single market without any tax frontiers or borders and a space for the free circulation of capital, assets, people and technology.
- Encouraging innovation and creativity by the protection of intellectual property rights.
- Defining social policies directed to improve living standards and the access to higher-quality benefits for several social groups of the subregion.

INTEGRATION AREAS

The CAN has carried out a Commercial Integration characterized by the Free Trade Zone, Common External Tariff, Rules of Origin, Competence, Technical rules, Sanitary Rules, Customs Instruments, Price Bands, Automotive Sector and Free Service Trade.

Regarding Foreign Affairs, the CAN keeps negotiations with MERCOSUR, Panama, Central America and with the CARICOM, the European Community, Canada and USA.

Likewise, this body is doing its best to achieve a physical and border integration regarding transportation, infrastructure, border development and telecommunications, and also a Cultural, Education and Social Integration.

A common market, the CAN performs coordination tasks on Macroeconomic Policies, Intellectual Property, Investments, Public Sector Purchases and Common Agricultural Policy.

INTELLECTUAL PROPERTY WITHIN THE ANDEAN COMMUNITY OF NATIONS

The Andean Pact provides for a fully developed industrial property system comprising modern and complete regulations regarding Intellectual Property matters. Decisions Nos. 345, 351, 391 y 486 by the Cartagena Commission refer to intellectual property rights.

Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties

The common provisions for protection of rights of plant breeders protect new plant varieties obtained by plant improvers.

Within the Andean Subregion, those people who have created or obtained a new plant variety by the application of scientific knowledge are entitled to an exclusive right to produce and market said plant for a term of 15-20 years.

This right is acknowledged and guaranteed by the pertinent authorities from each of the country members to the Andean Community, to which effect they grant the so called Breeder's Certificate, under Decision 345 of the Cartagena Agreement Commission on Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties

In order to be protected, plant varieties should meet certain basic characteristics:

- They shall be new, i.e. should not be commercially worked.
- They shall be distinct, i.e., they should be clearly distinguished from any other known on filing date of the application.
- They should be homogeneous, i.e., they shall be sufficiently uniform as to their essential features.
- They shall be stable, i.e., their essential features shall remain unchanged from generation to generation and at the end of each particular cycle of reproduction, multiplication or spreading.
- They shall have a suitable generic designation.

As to term of protection, this Decision sets forth that the certificate shall confer an exclusive marketing right which shall be from 20 to 25 years in the case of vines, forest trees and fruit trees, including their rootstocks, and from 15 to 20 years for other species, calculated in both cases from the date of grant, as determined by the competent national authority.

Common Regime on Copyright and Related Rights

- The Common Regime on Copyright and Related Rights (Decision 351) guarantees authors and other right holders an adequate protection of their creative literary, artistic and scientific works.

This common system, approved on December 17, 1993, through Decision 351 by the Cartagena Agreement Commission, acknowledges a suitable and effective right protection to authors and other rights holders, adequate protection of creative literary, artistic and scientific works, of any kind or form of expression and regardless of the literary or artistic merit or destination of the work.

Pursuant to Decision 351, the author is the person whose name, pseudonym or other sign identifying him is indicated on the work, and who is entitled to keep his work unknown or to disclose the same, to claim his authorship on the work at any time and to oppose to any deformation, mutilation or modification adversely affecting the integrity of the work or the author's reputation (moral right). The author also holds an exclusive right to make, authorize and prohibit the reproduction, marketing, translation, modification or other transformation of his product (patrimonial right)

The term of duration of the rights acknowledged by this Decision shall be not less than the life of the author and 50 years after his death. Where the ownership of the rights accrues to a legal entity, the term of protection shall not be less than 50 years counted from the making, disclosure or publication of the work.

In case of infringement of any of the above-commented rights, the competent national authority is empowered to order the immediate discontinuance of the infringing activity, and the attachment and seizure of the infringing products or of the apparatuses or means used in committing such infringement.

Related rights are those rights vested on the persons who are involved, not in creation of literary and artistic works but in their diffusion, and such rights have been also acknowledged and are protected by Decision 351, for a term of no less than fifty years.



Consequently, such protection covers artists, performers (lecturer, signer, speaker, actor, dancer, musician, narrator), phonogram producers (a physical person who fixes a representation or performance of sounds), and radio broadcasting bodies (the radio or television company broadcasting programs to the public).

Common Regime on Access to Genetic Resources

The access to genetic resources was not regulated until July 1996, which caused that the economic benefits derived from use of the rich genetic patrimony of the Andean subregion was not shared by the countries or origin and at least by the traditional communities responsible for the improvement thereof.

Consequently, the Common Regime on Access to Genetic Resources was approved in 1996 by Decision 391 issued by the Cartagena Agreement Commission in order to secure the fair and equal participation of the Andean Community countries in the benefits derived from use of genetic resources.

These rules regulate the obtention and use of said resources for a fairer and more equitable participation on benefits therefrom and is related to the protection of knowledge, innovations and traditional practices by Indian communities.

Henceforth, according to that Decision, those wishing to use and develop the active principles of the plants and microorganisms must first secure the necessary authorization and sign an Access Contract with the State.

These Community rules expressly recognize the rights of native, Afro-American, and local communities to their traditional know-how, innovations, and practices with regard to the genetic resources and their byproducts.

Common Industrial Property System

The new Common Industrial Property System of the Community, adopted by Decision 483, came into effect on December 1, 2000, in replacement of the regulations contained in Decision 344 of the Andean Community, which dated back to 1993.

Decision 486 contains joint regulations as to assignment, enlargement and compliance of a wide range of industrial property rights in the five country members, such as the granting of invention patents, industrial designs, trademarks, industrial secret protection, designations of origin, and unfair competition related to industrial property, among other things.

Likewise, these regulations provide for an improved protection of intellectual property rights and "more expeditious and transparent procedures for trademark registration and patent issuance"

An important number of regulations are also therein incorporated as to biopiracy, rights on genetic resources and patentability of living beings.

Procedures involved by registration, license, cancellation and nullity of rights are also contemplated by these regulations, in order to secure that such procedures will be the same in the five Andean countries.

This is an important community instrument which will reinforce the Andean negotiating capacity with respect to other countries.



The most substantive matters modified by the new Decision so as to adjust itself to the TRIPs are: exclusion of inventions, utility model term and frontier measures.

Other substantive matters relate to second use patents, Andean opposition, trademark coexistence, business secrets, renowned trademarks and commercial slogans.

Exclusions

The meaning of “invention” is established , since this will determine which products or processes shall be accepted for patent protection..

In this sense, the country members agreed that any unmodified organic and inorganic matter shall be excluded from patentability and, to that effect, the most possible comprehensive wording was attempted, which led to the possibility of patenting any modified living matter (races, species and genome). However, regarding patents on microorganisms, the granting of patent on a transitory basis was agreed, until the outcome of the WTO multilateral negotiations become known.

Finally, it is to be noted that the exclusion of medicaments from the world health organization was removed, considering that most of said medicaments are already within the state of the art.

Utility Model Protection Term

The subject was rapidly solved by adjusting the 8 years' term to the 10 years' term under the TRIPs.

Border Measures

Regarding this subject and considering that some country members did not hold any national provisions on this matter or that most of them have an incomplete frame of regulations, a whole chapter was included on administrative law and customs procedures.

This was due to the fact that multilateral provisions on intellectual property led countries to apply strict controls on the fulfillment of intellectual property rights. One of these measures is precisely to check at border points that goods to enter the territory of a country member do not infringe legitimate intellectual property rights held by third parties.

Second Use Patent

Decision 486 keeps the wording of Article 16 of Decision 344. However, the Andean Community Court of Justice shall decide on the scope of this article in proceedings on infringement heard by this community legal body.

Andean Opposition

Within this concept, the holder of a registered trademark in any of the country members shall be entitled to prevent registration of an identical or similar trademark both in the country where registration was obtained and in the other country members of the Andean Community. In that respect, there appear two complementary mechanisms , namely, as a cause for non-registrability which leads to nullity of the infringing registration and as an opposition itself, which grants a trademark holder the chance to claim his better right in proceedings before a second holder in another country member.

Trademark Coexistence

This mechanism is intended to solve the problem involving identical trademarks already registered in the name of holders in two or more country members and which presently immobilize important subregional capitals.

In this regard, country members had to determine what aspect should prevail at the time of discussing these provisions, i.e., territorial principles, local administration or decisions by Higher Bodies of the Andean Integration System.

The Countries decided to maintain coexistence.

Well-known Trademarks

A well-known trademark is the one which, on account of their diffusion, prestige and renown among the public, enjoys a protection broader than that of a common trademark, and not even registration in a country member is required in order to be protected.

In this regard, it was discussed whether the market should extend to the territory on which renown is to be appreciated and whether such appreciation should be made at a national level, or whether the established criteria to evaluate such notoriety or renown were sufficiently wide and satisfactory.

Finally, it was agreed that such evaluation was to consider notoriety within the national territory, notwithstanding that the subregional market could be also considered on said evaluation.

Commercial Slogans

Commercial slogans have been traditionally considered as elements that are added to the trademark and that, therefore, they are adjectives to such trademark and follow the same destination. However, there arose a discussion about the possibility of marketing this kind of elements separately, which in turn makes it necessary to also consider commercial slogans as separate concepts. Due to the fact that it would be highly complex to develop a sufficiently comprehensive legal framework covering such concept, the option set forth in Decision 344 was selected, together with the accessory nature of said slogans.

ACHIEVEMENTS BY THE ANDEAN COMMUNITY OF NATIONS REGARDING INDUSTRIAL AND INTELLECTUAL PROPERTY SYSTEMS AND OTHER RELEVANT AREAS.

- A Common External Tariff in effect since February 1, 1995, at an average level of 13.6%
- The creation and strengthening of the Andean legal system with the adoption of new Community provisions, whose hallmark is supranationality.
- Advances in harmonizing economic instruments and policies: provisions for preventing and correcting distortions in competition and for determining origin, technical and health provisions, and provisions on a common classification and on valuation, among other things, in addition to common foreign investment, intellectual property etc.
- The incorporation into the organic structure of the Andean Integration System, of the Andean Presidential Council and the Andean Council of Foreign Ministers, as the policy-making bodies for the process.

- The preferential access of Andean products to the European Union and the United States markets.
- Joint participation with a single voice in the negotiations for the Free Trade Area of the Americas (FTAA for the Spanish ALCA).
- The signing of an agreement between the Andean Community and the United States for the establishment of the Andean-United States Council that will boost exports and attract investments.
- The approval of Common Foreign Policy Guidelines.
- Adoption of a new common system for industrial property, considered to be one of the most highly developed in the hemisphere, which adapts the standard to the relevant stipulations in the World Trade Organization (WTO).
- Approval of the Bylaws of the Court of Justice of the Andean Community, which will strengthen the community system for settling disputes, and help expedite, update and make more effective the processes of this SAI body..
- Creation of a Working Group on the Rights of Indigenous Peoples as “a consultative level in the framework of the Andean Integration System, to promote the active participation of indigenous peoples in matters linked with subregional integration, in their economic, social, cultural, and political environments.”
- Approval of the Regional Strategy on Biodiversity for Tropical Andean Countries, the first such community strategy to be adopted by a group of countries signatories of the Convention on Biological Diversity, with a view to facilitating the concurrent action of the States, indigenous communities, native communities, Afro-American communities and local communities, the private sector, the scientific community, and civil society, regarding this issue
- The coming into effect of the Sucre Protocol introduces major amendments into the existing text of the Cartagena Agreement and establishes new mechanisms to intensify integration.
- The signing of the Free Trade Agreement by the Andean Community and Mercosur makes it possible to take a qualitative leap in the process for the creation of a South American integration space.
- Adoption of a new common system to avoid double taxation and to prevent tax evasion in Andean countries.

FREE TRADE AGREEMENT (FTA)

Negotiations are currently being held regarding the Andean (Colombia, Ecuador y el Peru).- USA Free Trade Agreement

A FTA constitutes an integral agreement including key subjects related to the economic relationship between the parties. Regarding access to the market of goods, certain subjects are discussed regarding tax and non-tax barriers, safeguard measures, rules of origin, technical obstacles, sanitary and phytosanitary measures and commercial defense mechanisms. The FTA also comprises certain subjects related to trade of services (telecommunications, financing,



professional, building, software services, among others), to electronic commerce and governmental purchases, reciprocal promotion and protection of investments and protection of intellectual property rights, the fulfillment of labor and environmental regulations and the implementation of mechanisms to settle disputes.

Regarding intellectual property matters, the position of the three Andean countries is that, in principle, public health rights should prevail over intellectual property rights, under regulations provided for by the World Trade Organization and applied by the three countries holding negotiations with USA.

USA is interested in patenting plants, animals and testing data (product information) among other aspects. For that reason, USA intends to have stronger rules securing a broader protection on intellectual property rights.

Likewise, there has been a joint initiative to keep intellectual property regulations in force in their territories and the Andean Community.

This is a plurithematic negotiation and, therefore, it should be held on the basis of an indivisible whole.

The nineteen working tables at the FTA with USA are as follows:

- Access to markets
- Textiles and clothing.
- Customs Procedures.
- Technical Assistance to Commerce.
- Rules of Origin.
- Agriculture.
- Sanitary and Phytosanitary Matters.
- Environment.
- Labor Matters.
- Policies on Competition.
- Governmental Purchases.
- Investments.
- Frontier Services.
- Financial Services.
- Electronic Commerce.
- Intellectual Property.



- Settlement of Disputes
- Safeguard Measures.
- Reinforcement of Capacities (Technical Cooperation)

Schedule of Negotiation Rounds

18-19 May 2004	Beginning of Negotiations in Cartagena, Colombia.
4 -18 Jun 2004	2 nd Round of Negotiations in Atlanta, USA.
26 -30 Jul 2004	3 rd Round of Negotiations in Lima, Peru.
13 -17 Set 2004	4 th Round of Negotiations in Chicago, USA.
25 - 29 Oct 2004	5 th Round of Negotiations in Guayaquil, Ecuador.
13 -17 Dec 2004	6 th Round of Negotiations in Miami, USA.
February 2005	7 th Round of Negotiations in Colombia.

Developments on Negotiations with USA concerning the FTA

Sanitary Measures

- A draft was jointly formalized between the Andean countries and the USA in Miami.
- The United States delivered to the Andean country representatives a master proposal, which will allow to contemplate the main interests in Andean countries and to arrange technical work teams that would be in charge of dealing with sanitary and phytosanitary matters on a bilateral and independent basis.
- This master or framework text is expected to allow Peru to attach a Chapter higher than that obtained by Chile in the FTA – Chile Plus..

Intellectual Property

- Andean countries attained important developments in the patent field. USA accepted the Andean proposal to keep in force the system of Patent Oppositions, together with nullity actions against wrongly granted patents under patent legislation in force in each of the Andean countries.
- USA accepted that Andean regulations on loss of novelty as a result of disclosure will be kept within the FTA, which provisions determine the circumstances under which novelty is lost or such disclosure is allowed, particularly when said actions derived from acts performed by the applicant and within a particular term.
- As another achievement, amendatory mechanisms can be implemented on procedures related to patent applications or amendments to applications themselves - at any stage of procedures- and provided that the subject-matter originally filed is not enlarged as a result of such action.



Important Studies on Impact by Peruvian Adhesion to FTA concerning Industrial Property Matters.

- Impact of the Peruvian Adhesion to the protocol on the Madrid arrangement related to the International Trademark Register and the Treaty on Trademark Rights www.indecopi.gob.pe/novedades/ImpactoMadrid
- Analysis about Economic Impact of a Testing Data Protection System in the Peruvian Pharmaceutical Market. www.indecopi.gob.pe/novedades/DatosdePurebaMedicamentos
- Knowledge and Intellectual Property Balance in Commerce www.indecopi.gob.pe/novedades/BalanzaConocimiento

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