

## 14. THE ANDEAN COMMUNITY'S INTELLECTUAL PROPERTY REGIME

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This chapter reviews recent developments in the area of protection of intellectual property rights (IPR)<sup>2</sup> in Latin American countries, with an emphasis on the Andean Community regime. The first section analyzes the debate between developed and developing countries, explaining why the topic has become so controversial and sensitive, and how this process has influenced the Andean Community's legislation. The second explores the ways in which the attitude toward the protection of intellectual property in Latin America has changed over the past decades, in step with globalization and technological development. The principal multilateral and bilateral mechanisms, as well as the various unilateral measures that have been used to enhance the protection of intellectual property rights and assess their advantages and disadvantages are presented. Finally, the chapter sets out the major challenges that countries of the region will face in the coming years, as the transition periods allowed under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)<sup>3</sup> of the World Trade Organization (WTO) phase out and the negotiations of the FTAA commence.

### THE EVOLUTION OF THE ANDEAN REGIME

The Andean Integration System (SAI) constitutes a community of interests, based on the concept of "supranationality" in which individual national sovereignty is exercised in a broad context in matters relating to economic integration, including intellectual property. Decisions are made by community bodies (the Presidential Council,<sup>4</sup> the Commission,<sup>5</sup> and the Expanded Council<sup>6</sup>) with representation of each member country, and they are executed by a General Secretariat.<sup>7</sup> The Court of Justice of the Andean Community (Andean Court of Justice<sup>8</sup>) is the judicial body in charge of the juridical interpretation, legal control and supervision over compliance with obligations. The rulings of the Court are binding for all the member countries of the system.

<sup>1</sup> Magistrate of the Andean Community Tribunal of Justice. The opinions expressed in this paper are those of the author, and should not be attributed to the Tribunal.

<sup>2</sup> Intellectual property rights include in general the following major components: industrial property (particularly patents, trademarks, industrial designs and appellations of origin); and copyright and related rights (particularly for literary, musical, artistic, photographic and audiovisual works).

<sup>3</sup> The Agreement on Trade-Related Intellectual Property Rights (TRIPS) entered into force on January 1, 1995. It is the most comprehensive multilateral treaty in the area of intellectual property. The areas of protection included in its 73 articles and seven sections are the following: copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout-designs of integrated circuits; protection of undisclosed information; control over anti-competitive practices in contractual licenses. The Agreement could be divided into three main sections: a) Minimum standards of protection. The TRIPS agreement establishes minimum standards of protection in each area of intellectual property. Each of these elements is defined, including the protected subject matter, its acquisition, rights conferred, term of protection and exceptions to the rights conferred.

b) Enforcement. The second group of provisions relates to procedures and remedies for the enforcement of intellectual property rights in each country. The Agreement sets out general obligations applicable to all procedures for enforcing IPR. It also contains provisions on civil and administrative procedures and remedies, provisional measures and special requirements related to border measures and criminal proceedings.

c) Dispute settlement. The disputes about the interpretation and compliance with TRIPS are subject to the WTO Understanding on Dispute Settlement.

<sup>4</sup> This is the supreme body of the Andean Integration System, which is responsible for issuing Directives on various areas of Andean subregional integration. These in turn are executed by the designated bodies and institutions of the System, in accordance with the powers and mechanisms established in their respective Constitutive Treaties and Instruments. The Council is made up of the Presidents of the member countries.

<sup>5</sup> This is the main standards-setting body of the Andean Integration System. Its legislative authority, which is expressed through the adoption of Decisions, is currently shared with the Andean Council of Ministers of Foreign Relations. The Commission is composed of one plenipotentiary representative of each of the member state governments. Each government has a full representative and an alternate. The Commission has a President who remains in office for one year. That function is exercised by the representative of the country that occupies the Presidency of the Andean Presidential Council.

<sup>6</sup> The Andean Council of Ministers of Foreign Relations is the policy-setting body, responsible for ensuring progress towards the objectives of the Andean subregional integration process, and for formulating and executing the Andean Community's foreign policy. The Council is made up of Ministers of Foreign Relations of the member countries. When meeting in its expanded form, the Council consists as well of representatives to the Commission, for the purpose of dealing with matters of interest to both bodies.

<sup>7</sup> This is the executive organ of the Andean Community which, as of August 1, 1997, replaced the Junta of the Cartagena Accord. It operates on a permanent basis and has its headquarters in the city of Lima, Peru. The General Secretariat is headed by a Secretary General, who is elected by consensus by the Andean Council of Ministers of Foreign Relations.

<sup>8</sup> This is the Andean Community's jurisdictional body, with territorial competence in the five member countries, and with a permanent headquarters in Quito, Ecuador. The Tribunal is made up of five Magistrates, who must be nationals of the member countries. Each Magistrate has two alternates who may replace him in case of definitive or temporary absence, as well as incapacity or resignation. It interprets, in a pre-judicial manner, the rules of the Andean Community's legislation, to ensure that they are uniformly applied throughout the Member Countries. It settles disputes over the fulfillment of obligations by Member Countries. It resolves appeals brought against acts of the Andean Council of Ministers of Foreign Relations, the Commission, or the General Secretariat by Member Countries or individuals. It serves as the arbiter of disputes that arise between bodies or institutions of the SAI or individuals and has jurisdiction over labor disputes arising from the bodies or institutions of the SAI.

Article 27 of the Cartagena Agreement, established a common regime for the treatment of foreign capital and for trademarks, patents, licenses and royalties. The history of the common intellectual property regime in the Andean Group can be divided into stages:

- 1) Decision 95, which prevailed until 1991, and
- 2) The substantive regime contained in Decisions 311, 313, and 344, still in force today, supplemented by Decision 345 on plant varieties and by Decision 351 on copyright.<sup>9</sup>

### ***The Protectionist influence***

Beginning in the 1950s, the issue of protection of intellectual property rights, and in particular the patent system, developed in parallel with technological progress and post-war economic development. The developed world supported the system of protection for industrial property, while the developing world focused on objectives of national development and social progress. During the 1960s, Latin America saw the implementation of a series of policies in reaction to the perception of external dependency on technology transfers. This dependency was seen to be manifested through foreign patents that were not in use or that resulted in import monopolies, especially in the pharmaceutical sector. Influenced by these conditions, the Andean Group, through Decision 85 of 1974, prohibited the patenting of pharmaceutical products and import monopoly practices.

The mandate in Article 27 of the Cartagena Agreement, to establish a common regime for industrial property, was not fully implemented by all the countries of the region. Decision 85, the first community ruling on the matter, was issued under the juridical framework of the original Cartagena Agreement, which provided that member countries should incorporate it into their domestic legislation within six months of its approval. Colombia, Ecuador, and Peru adopted the provision. Bolivia did so initially, but suspended its applicability three months later.<sup>10</sup> Venezuela did not comply.

Decision 85 cannot be considered, strictly speaking, as a “common regime,” since it had only partial geographic coverage. Only Colombia, and subsequently Ecuador, was in compliance with the system juridical interpretation of the Andean area, thus its application was not generalized. The countries that adopted Decision 85 adapted their domestic regulations and administrative structures. In the countries that did not adopt the regime, particularly Venezuela,<sup>11</sup> the new regime met with opposition from those industrial property sectors affected by the protectionist nature of Decision 85. They considered that its objectives ran counter the basic aspects of economic development, especially with respect to the transfer of technology and the promotion of foreign investment.

### ***The New Andean Community Regime***

At the outset of the 1980s, policies for the control of foreign investment began to be seriously questioned, and protection of intellectual property rights became a priority in many industrialized countries. In the United States, this objective was advanced by the revised trade law of 1984.<sup>12</sup> That law strengthened the U.S. government's trade policy powers, stressing the idea of reciprocity and the use of sanctions, as an exception to the Generalized System of Preferences for developing countries. Specifically, measures were directed against those countries that do not grant adequate and effective means to secure and enjoy commercial benefits relating to patents, trademarks, copyrights and related rights, mask works, trade secrets and plant breeder's rights.<sup>13</sup>

In 1986, the Office of the United States Trade Representative (USTR) launched a program intended to reduce violations of intellectual property rights at the international level. By 1987 the government of the United

<sup>9</sup> These Decisions may be consulted in the Official Gazettes No. 96 of December 15, 1991; No. 99 of January 28, 1992; No. 142 of October 29, 1993; and No. 145 of December 21, 1993.

<sup>10</sup> Bolivia suspended Decision 85 on December 28, 1982, under the government of Hernán Siles Suazo.

<sup>11</sup> Hildegard Rondón de Sansó, *La Decisión 313 de la Comisión del Acuerdo de Cartagena y el Régimen de Propiedad Industrial*, Caracas 1993, p.22. The author refers as well to the problem of constitutionality in Venezuela, with respect to integration law.

<sup>12</sup> “The Trade and Tariff Act of 1984” reformed the provisions of the “Trade Act of 1974,” P.L. 93-618, approved on January 3 1975. 19 U.S.C. §§2101-2847, 88 Stat. 1978.

<sup>13</sup> 19 U.S.C. §2462 (c) (5).

States had a list of countries deemed to offer inadequate or ineffective protection to intellectual property. It included all the countries of the Andean region, as well as other Latin American countries such as Argentina, Brazil and Mexico.<sup>14</sup> The U.S. position held that research and development efforts and investment must be recognized, and that there were benefits for all countries from new and improved technologies.

During the course of the Uruguay Round negotiations, discussions began about on whether to include the issue of intellectual property rights within the framework of the General Agreement on Tariffs and Trade (GATT). The Andean Community countries that were GATT signatories-- Colombia and Peru, together with other Latin American countries, opposed setting rules on intellectual property rights within the GATT. However, they did not directly participate in the negotiations, but were kept informed of the proceeding by the regional groups. Given these circumstances, and the fact that they lacked the technical expertise to follow the progress of the discussions, they had little capacity to influence the final outcome --the TRIPS agreement of the WTO.<sup>15</sup>

The incorporation of the TRIPS into the multilateral trade framework, as well as the changing economic policies in the Andean countries led to the revision of the Andean IPR regime. Decision 313,<sup>16</sup> which replaced Decision 85, and Decision 344<sup>17</sup>, entered into force directly and immediately.

While Decision 85 had excluded plant varieties and pharmaceutical products as patentable subject matter, these were incorporated into the Andean regime through Decisions 345 and 351, that deal with plant varieties and copyrights. However with respect to protection for biotechnology, the Andean regime excludes from patentability species and breeds of animals and procedures for obtaining them, as well as the human body and its genetic identity.<sup>18</sup>

### ***The Role of the Andean Court of Justice***

The Andean Court of Justice, because of its powers and jurisdiction, is an important source for the common regime of industrial property.<sup>19</sup> The Court controls the legality of community rules and ensures their uniform application throughout the member countries. Its decisions are directly enforceable in countries of the Andean Community. Its jurisprudence has produced important precedents in the area of intellectual property. Among other things, its decisions have covered the following topics:

- Requirement that signs be visually perceptible as an additional element to determine the eligibility for registration of trademarks (Articles 5 of Decision 85 and 71 of Decision 313);
- Non-eligibility for registration as a trademark of signs or marks that are identical or similar to registered trademarks, or where their use would result in a likelihood of confusion (articles 73 of Decision 85 and 93 of Decision 313);
- Right of priority for a trademark applicant to seek registration in another member country (articles 73 of Decision 85 and 72d) of Decision 313);
- Non-patentability of pharmaceutical products and their patentability pursuant to Decision 313;
- Determination of the state of the art for establishing whether an invention is new or not (articles 2 of Decision 85 and 2 of Decision 313);
- The definition of "competent national offices," understood as national agencies designated by each government within its administrative structure to manage de acquisition and maintenance of industrial property (Articles 14, 22, 26, 33, 44, 62, 64 and 66 of Decision 85; and 21, 28, 32, 40, 51, 79, 81 and 83 of Decision 313);
- Rejection of applications for registration of trademarks, or their cancellation, when it is proven that such registration would result in likelihood of confusion with those already registered, and that relate to products or services included within the same class of nomenclature;

<sup>14</sup> Eduardo White, *Las Patentes en el Sector Farmacéutico*, 35 Revista del Derecho Industrial, 362-366.

<sup>15</sup> Carlos Correa, *Acuerdo TRIPS*, Buenos. Ana María Pacón, *ADPIC y los Países en Vías de Desarrollo, Posición Durante y Después de la Ronda de Uruguay*, 2 Los Derechos de Propiedad Intelectual en la Organización Mundial de Comercio 137, Dir. Juan Luis Iglesias Prado, CEEI, Madrid.

<sup>16</sup> "Régimen Común sobre Propiedad Industrial," February 6, 1992.

<sup>17</sup> "Régimen Común sobre Propiedad industrial" replaced Decision 313. Signed October 21, 1993, and entered into force on January 1, 1994.

<sup>18</sup> Article 7, Decision 344, Common Regime on Industrial Property. Together with micro-organisms, this includes the new technologies that have influenced the fields of electronics, informatics, robotics, superconductivity, genetic engineering and biochemistry, among others.

<sup>19</sup> See Jurisprudence of the Tribunal of Justice of the Cartagena Accord, 1984-1993, Volumes I-III.

- Non-registrability of trademarks that indicate the geographic origin of products and services when this might mislead the consumer as to the stated origin;
- Member countries are prohibited from establishing additional requirements for the registration of a trademark, beyond those contemplated in articles 54 and 58 of Decision 85, and from setting any other grounds for cancellation of registration beyond those specified in articles 77 and 79 of that Decision;
- The possibility, in the case of pharmaceutical products, that the domestic legislation of each country may impose additional requirements to those provided in decisions of the Commission for the registration of a trademark. (Ruling of October 1, 1988).

## THE ANDEAN COMMUNITY AND ITS EXTERNAL RELATIONS

With respect to the application of intellectual property regimes, it is important to consider the situation of the Andean Community in relation to multilateralism, bilateral negotiations and unilateral actions.

### ***Multilateralism***

One of the major differences between the TRIPS agreement and other international conventions on intellectual property is the existence of an institutional mechanism for the settlement of disputes. The rationale that led developing countries to accept minimum standards of protection under the WTO was to establish a dispute settlement mechanism within a multilateral framework<sup>20</sup>.

The WTO dispute settlement mechanism provides a forum for the economically weaker countries that is free of the pressure that may be present in bilateral negotiations. Acceptance of this multilateral scheme for dispute settlement presupposes that member countries abandon unilateral measures. Such actions can only be justified under the new system if a member fails to comply with its obligations, as a result of a dispute settlement process.

In addition, the World Intellectual Property Organization (WIPO),<sup>21</sup> at the request of the Andean Community countries, has made a number of specific recommendations for amendments to Decision 344, to make it compatible with the rules of the Paris Convention<sup>22</sup> and the TRIPS, particularly in the following aspects:

- Reduction of exclusions to the patenting of pharmaceuticals;
- Elimination of the indiscriminate exclusion from patentability of certain biotechnological procedures for producing drugs such as human insulin or diagnostic materials;
- Elimination of reciprocity in the recognition of the right of priority;
- Modifications to the compulsory licensing system;
- Adjustment of the notion of well-known trademark to that defined in the TRIPS agreement;
- Protection for well-known trademarks against unauthorized use;
- Admissibility of multiple trademark applications;
- Automatic renewal of trademark registration;
- Recognition of trademark priority, both domestically and externally.

Moreover, the WIPO considers that the Andean countries should incorporate issues such as the protection of layout-designs of integrated circuits, and measures, procedures and actions that facilitate the defense and enforcement of intellectual property rights.

### ***Bilateralism***

In the area of intellectual property, the Andean and other Latin American countries have a particularly controversial relationship with the United States. Because of its economic position and its status as a net exporter of technology, the United States is an especially active promoter of IPR. Despite the existence of fora such as the WTO and the FTAA, the U.S. approach towards the Andean Community in this area has been essentially bilateral. This practice has also threatened the existing common Andean regime. The Court of Justice has warned that agreements of a bilateral nature, with different standards from those of the region, may lead to contradictions within the common regime, and may affect the treatment of intellectual property.

U.S. objections to Decisions 344, 345 and 351, which set out the common regime for intellectual property, may be summarized as following:

<sup>20</sup> Otto Stamm, *Las Negociaciones para la Protección de Nuevas Tecnologías*, 5 Revista de Derechos Intelectuales 13, Ed. Astrea (1991).

<sup>21</sup> This is one of 16 United Nations specialized organizations. The function of WIPO is to promote the protection of intellectual property throughout the world, in cooperation with States, and to administer some 20 multilateral treaties that deal with legal and administrative aspects of intellectual property. It has 161 members, including the countries of the Andean Community.

<sup>22</sup> The Paris Convention for the Protection of Industrial Property. The Convention, concluded in 1883, was supplemented by an Interpretative Protocol in Madrid in 1891, was revised in Brussels in 1900, in Washington in 1911, in The Hague in 1925, in London in 1934, in Lisbon in 1958 and in Stockholm in 1967, and amended in 1979. The Convention's basic provisions may be divided into three major categories: national treatment, right of priority and minimum standards.

- The need for effective systems of IPR enforcement (both from the substantive and the procedural viewpoints);
- Implementation of the 20 year term for patents as of the date of filing;
- No exclusion from patentability for diagnostic procedures, plants or animals, genetic materials and medicines contained in the list of basic products of the WHO (World Health Organization);
- No international exhaustion of patent rights;
- Exceptions to the use of patents by third parties;
- System of compulsory licensing;
- Establishment of additional systems for transitional protection, such as the “pipeline” protection and extension of the patentability period.

With respect to trademarks, the main objections are directed at subjecting the protection of well-known trademarks to conditions of reciprocity; exhaustion of rights (article 106); granting of compulsory licenses (article 107) and the prohibition against the holder of a trademark to waive his right without the consent of the licensees. The copyright regime is the subject of minor observations, as is that of industrial designs and plant varieties.

These objections have affected the bilateral negotiations between the United States and the Andean countries. One example is the case of so-called “pipeline” protection.<sup>23</sup> In every negotiation, the U.S. approach has been to propose the introduction of this system in Colombia, Ecuador, Peru and Venezuela. U.S. insistence on incorporating this instrument into the intellectual property regime has been rejected by most Andean countries, due to the adherence to the principle of absolute novelty.

The jurisprudence of the Andean Court of Justice has adopted the concept of absolute novelty in order for an invention to be patentable. This implies that for an invention to be new and not to be included in the state of the art, it must not be known neither within the country where the patent is being sought, nor in any other country. This principle is referred to as the universal scope of novelty, or absolute novelty, which is used as a criterion for determining the patentability of an invention.<sup>24</sup> The Court of Justice of the Andean Community has stated that Decision 344 and its provisions do not recognize the “pipeline” protection as part of the Andean legislation.

In 1992, Colombia opposed the signing of a bilateral agreement with the United States on intellectual property, because it threatened the Andean rules and the principle of absolute novelty in patents. Peru rejected the informal US proposal to negotiate on additional time limits for the granting of patents during the preparatory meeting of Trade Ministers in Denver in 1995. The reason was that “pipeline” protection would break the principle of novelty of patents by recognizing patent protection for inventions that are part of the state-of-the-art. Venezuela, rejected similar initiatives for the same reason, in 1992 and 1995, during negotiations for an investment protection agreement.. The story was different, however, in the case of Ecuador<sup>25</sup>. On October 15, 1993, Ecuador signed a Bilateral Agreement for the Protection and Enforcement of Intellectual Property Rights with the United States. This agreement established a territorial limitation on the requirement for novelty under the common Andean regime. It allowed any invention included within the state of the art in countries other than Ecuador to be patented in that country.

As a result of this agreement, Ecuador incorporated the “pipeline” protection into a provision of domestic law (Decree 1344 A of 1983). The Court of Justice declared the country in violation of the Andean rules, because the Andean regulations do not permit this system of extending the patent period. It considered that by establishing an exceptional regime in the area, Ecuador was granting advantages to patenting in its own country, in a manner that was unfair under the common regime applied in the other Andean countries.

<sup>23</sup> Despite the opinion of the majority of the countries on the issue of absolute novelty, the United States has been seeking to have other countries establish mechanisms that would indirectly expand protection for patents as a way of compensation for the high cost and investment in research and development by industrial sectors such as pharmaceuticals. “Pipeline” protection is usually defined as a transition mechanism for granting protection to products that were not patentable in countries that have amended their patent legislation. *See infra* note 29.

<sup>24</sup> The United Kingdom has established this rule (Patent Act of 1977), as has the Federal Republic of Germany (Law of December 16, 1980). Currently, the requirement for absolute novelty is in force in all member countries of the European Union.

<sup>25</sup> Junta del Acuerdo de Cartagena, Doc. J/AJ/M147-95, Aide memoire. Negociaciones del *pipeline* entre los países miembros y Estados Unidos.

### ***Unilateral Actions***

In this area, it should be noted that the mechanism used by the United States is based on its trade legislation. According to section 301 of the Trade Act of 1974<sup>26</sup> (with its amendments and additions), USTR can find that an “act, policy or practice of a foreign country (i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (ii) is unjustifiable and burdens or restricts United States commerce.” Similarly, the USTR may judge whether a foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement. When the USTR determines that “an act, policy or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce,” the USTR has the discretionary power to take such steps as it deems necessary to agree with foreign countries in the elimination of the act, policy or practice that is the subject of the action. Investigations could be triggered by a complaint from private parties. They begin with a series of consultations with the country in question, and a procedure that provides for the right of defense, followed by a monitoring system to “monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country.” The USTR may make determinations that will gradually place countries on a “watch list” or a “priority watch list,” depending on the level at which the USTR classifies the foreign law or practice in question. This follow-up is reflected in a regular report that the USTR presents to Congress. Similarly, the USTR may impose sanctions, that may include withdrawing tariff preferences that the United States has granted unilaterally. Following are some examples of the application of special section 301 with stricter standards than those negotiated at the multilateral level:

In 1997, Argentina and Ecuador were included on the “Priority Watch List.”<sup>27</sup> Argentina for maintaining a strict system of compulsory licensing, for not providing “pipeline” protection and for not granting patent protection to pharmaceuticals until the year 2000.<sup>28</sup> For this reason, it was subject to a reduction of benefits under the GSP. Ecuador was on the list for failing to implement the TRIPS provisions, and for refusing national treatment for trademarks. Bolivia, Colombia, Peru and Venezuela were on the “Watch List” for similar reasons, primarily because they had not implemented TRIPS, even though the transition period granted to developing countries has not expired.

#### THE FTAA PROCESS: CHALLENGES AND OUTLOOK.

The prospect of creating a Free Trade Area of the Americas (FTAA), highlighted in the Action Plan adopted at the 1994 Summit of the Americas in Miami, is regarded as an opportunity to “broaden and deepen hemispheric economic integration.”<sup>29</sup>

A series of ministerial meetings held in Denver (1995), Cartagena (1996) Belo Horizonte (1997) and San José (1998) made significant progress in defining the basic principles for the negotiations: compatibility with commitments under the WTO agreements, no new barriers to trade for countries outside the FTAA, and transparency in negotiations. A number of working groups were created in different areas,<sup>30</sup> among them, one focused on the protection of intellectual property rights. This particular working group addressed the IPR systems in the hemisphere, the implementation of TRIPS and the impact of the new technologies in the existing

<sup>26</sup> 19 USC §2411

<sup>27</sup> Press release 97-37, April 30 1997, Office of the United States Trade Representative, available on the internet at [www.ustr.gov](http://www.ustr.gov).

<sup>28</sup> The Argentine case stands out in particular. That country, in amending its patent law, declined to make changes in certain areas. The United States considers that the new regime is not consistent with TRIPS standards, with respect to rules such as exhaustion of rights, limitations of the rights of patent holders, and especially with respect to the granting of compulsory licenses. The case is illustrative for the Andean area, to the extent that similar observations are made concerning its patent legislation. According to the system established by Special Section 301, Argentina was placed on the “priority watch list” and the United States has already reduced tariff preferences available under the GSP. The debate within the chemical and pharmaceutical industry in Argentina about the patenting of drugs has a long history. The country’s Supreme Court issued a significant ruling in the case of American Cyanamid vs. UNIFA.

<sup>29</sup> Declaration of Principles, Summit of the Americas, Miami 1994. Available on the Internet at [www.sice.oas.org](http://www.sice.oas.org).

<sup>30</sup> Market Access; Customs Procedures and Rules of Origin; Investment; Standards; Sanitary and Phyto-sanitary Measures; Subsidies; Antidumping and Countervailing Duties; Smaller Economies; Government Procurement; Services; Competition Policy; Dispute Settlement.

regimes of IPR protection.<sup>31</sup> In the patent area, the sector that has exercised the greatest pressure is pharmaceuticals. Based on the argument that there is a direct relationship between the degree of intellectual property protection and the transfer of technology and investment in research and development, there is an attempt to establish criteria such as non-discrimination against specific industries, recognition of an additional period of protection for the product development stage (“pipeline” protection), and the prohibition of compulsory licensing.

The private sector is being called upon to play an important role in the process of creating a free trade area at the hemispheric level. The active involvement of business people, labor organizations, NGOs and other sectors of society will be essential in order to achieve success in the negotiations and an agreement for the benefit of all the countries involved in the process. By participating actively in building the FTAA, the Andean and Latin American countries will avoid a repetition of the lamentable failure of the region to take part in the preparation and outcome of the TRIPS negotiations.

The intellectual property agenda should contain the following topics:

- a) Strengthening the multilateral mechanisms for the settlement of disputes of intellectual property matters;
- b) Elimination of unilateral measures that restrict the completion of trade negotiations on aspects related to intellectual property, to the extent that they are contrary to the systems established in TRIPS;
- c) Definition of minimum standards for the protection of IPR, that will have to be adopted by developing countries during the transition period of TRIPS;
- d) Elimination of domestic measures that imply the extension of exclusive rights under patents beyond the rules established by TRIPS;

Considerations about the illegality of Special Section 301 of the United States Trade Act of 1984, in light of the TRIPS agreement.

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<sup>31</sup> In this respect, important initiatives have already been taken at the hemispheric level, such as the Conference of the Americas on Intellectual Property (Los Angeles, July 1996), sponsored by the US Department of Commerce, and the Intellectual Property Alliance, which has given special attention to the need to meet the challenges arising from the introduction of new technologies, especially the protection of intellectual property rights in cyberspace.