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INTERNATIONAL CONSUMER PROTECTION IN MERCOSUR

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1. Introduction

Historically, consumer protection originated in developed countries with the consolidation of fordist mass production model. However, in the American continent consumer protection had a close relation with the import-substitution model which took place in Brazil, in the second half of the twenty century. In parallel, the imperative to ensure the access to consumption to vast segments of the Brazilian population was a fundamental necessity.

Other Mercosur countries did not an industrialization process having remained largely agricultural economies. In those countries, the industrial activity was confined to processing primary goods. Consumer protection contributed to improve the quality of products at domestic level and to lead a more balanced relations between consumers and producers. In an economic integrated space with a number international economic transactions, it is of utmost importance existing rules of consumer protection.

Our aim is to analyze some principles and achievements that the Technical Committee 7 (CT nº 7), in charge of creating norms, adopting policies and taking measures designed to ameliorate and develop the international consumer protection in the Mercosur countries.

2. Consumer law in the founding of Mercosur states

Before the creation of Mercosur, Brazil, in a pioneering way, had specific rules for consumer protection. The Code of Consumer Protection, Law nº 8.098, passed in the Brazilian Congress on September 11, 1990, in virtue of Article 5º, XXXII of 1988 Federal Constitution and Article 48 of its Transitional Provisions. Prior to 1991, the

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remaining countries, Argentina, Uruguay and Paraguay, did not contain, in a particular instrument, rules on that matter.

In Argentina, for example, the law 24.240 on consumer protection[3] came to light on September 22, 1993, in force up to date. Only after one year, the Argentine Constitution, amended in 1994, included Articles 42 and 43 in order to solidify the regulation in this respect.

The 1992 Paraguayan Constitution solely indirectly alluded to consumer protection. Although the Law 1.334, passed on October 27, 1998, protecting consumers and users[4], received influence from Brazilian and Argentine laws and the Mercosur Protocols[5], mentioned below.

Finely, the Uruguayan Constitution does not contain any constitutional norm guaranteeing consumer's rights since the theme did not figure in the 2004 constitutional reform.[6] Nevertheless, on September 20, 1999, the Law 17.189[7] disciplined the consumption relation for the first time in the history of that country. Due to lack of formality, such a law came to be replaced by Law 17.250[8], on August 11, 2000 – Law of Consumer Protection – still in force. Its main source finds itself in the Mercosur Protocol on Consumer Protection.[9]

As one can easily observe both Paraguayan and Uruguayan[10] legislation in this field were strongly inspired by attempts of legislative harmonization within the economic bloc.

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[3] A Lei nº 24.240 foi modificada por diversas leis, entre elas: Lei nº 24.568/1995 (publicada no *Boletín Oficial de la República Argentina*, nº 28.260, em 31/10/1995); Lei nº 24.787/1997 (publicada no *Boletín Oficial de la República Argentina,* nº 28.617, em 2/4/1997); Lei nº 24.999/1998 (publicada no *Boletín Oficial de la República Argentina,* nº 28.948, em 30/7/1998); Lei nº 26.361/2008 (publicada no *Boletín Oficial de la República Argentina,* nº 31.378, em 7/4/2008); Lei nº 26.993/2014 (publicada no *Boletín Oficial de la República Argentina,* nº 32.972, em 19/9/2014) e Lei nº 26.994/2014 (publicada no *Boletín Oficial de la República Argentina,* nº 32.985, em 8/10/2014).

[4] A respeito desta lei, ver: RUIZ DÍAZ LABRANO, Roberto. *Derechos del Consumidor y del Usuario de Servicios. Ley nº 1334/98 de Defensa del Consumidor y del Usuario.* Asunción: La Ley, 2014. pp. 75-438.

[5] FELLOUS, Beyla Esther. *Proteção do Consumidor no MERCOSUL e na União Europeia.* São Paulo: Revista dos Tribunais, 2003. p. 170.

[6] BOURGOIGNIE, Thierry. *Integración regional y la protección del consumidor en las Américas y en Europa.* In: BOURGOIGNIE, Thierry (Dir.). *Intégration Économique Régionale et la Protection du Consommateur.* Cowansville-Québec: Éditions Yvon Blais, 2009. p. 51.

[7] Lei publicada no *Diario Oficial (D.O),* nº 25.368, em 30/9/1999.

[8] Lei publicada no *Diario Oficial (D.O.),* nº 25.583, em 17/8/2000.

[9] RIBEIRO, Bruno Marques; ZORDAN, Fernando Henrique Zorzi. "A necessidade da harmonização legislativa no MERCOSUL para a proteção jurídica do consumidor". In: MENEZES, Wagner (Coord.) *Estudos de Direito Internacional – Anais do 4º Congresso Brasileiro de Direito Internacional – 2006.* Vol. VI. Curitiba: Juruá, 2006. p. 469.

[10] Com relação à Venezuela e à Bolívia, países que ingressaram posteriormente ao MERCOSUL na condição de membros plenos, é importante destacar que, na atualidade, a Venezuela não conta com uma

3. The harmonization of legislation on consumer rights in Mercosur

Mercosur[11] is an integration project created by the Treaty of Asuncion, on March 26, 1991, that falls within is known "new regionalism".[12]

Initially, composed of Brazil, Argentina, Uruguay and Paraguay, since August 12, 2012, Venezuela[13] has become a full member of Mercosur. Furthermore, on December 7, 2012, the protocol of accession of Bolivia to Mercosur was signed, which is currently being ratified, pending only the acceptance of the Paraguayan Congress. In spite of effectiveness of that protocol, the 48th summit meeting of Mercosur, held in Brasilia, on July 17, 2015, rendered official, formally, the Bolivia entry to the bloc.

If member states are really interested in deepening the integration with a view to achieving the so-called four freedoms, the best way to do this is to jointly define public policies, among which the international consumer protection. Therefore, consumer protection is a natural goal when states seek to make up of an economic bloc in a globalized world.[14]

With that objective in mind, on April, 23, 1994, the finance ministers of the original Mercosur states signed a Joint Declaration conveying the willingness to make

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lei de proteção ao consumidor, por ter revogado a Lei DEPABIS (Lei para a Defesa das Pessoas no Acesso para os Bens e Serviços), de 2010. Dessa forma, desde 23/1/2014, quando foi publicada a Lei Orgânica de Preços Justos (posteriormente reformada em 8/11/2015), que expressamente revogou a legislação indicada, o consumidor venezuelano não conta com uma lei protetiva específica. Na Bolívia, a situação é distinta. Em 6/ 12/2013, foi aprovada a Lei nº 453, conhecida como Lei Geral dos Direitos das Usuárias e Usuários e das Consumidoras e Consumidores (publicada na *Gaceta Oficial del Estado Plurinacional de Bolivia,* nº 591NEC, em 6/12/2013), que pela primeira vez regulamenta os direitos do consumidor no país.

[11] Sobre os antecedentes históricos do bloco, ver: SCOTTI, Luciana B. "El derecho de la integración en el MERCOSUR". In: NEGRO, Sandra (Dir.) *Derecho de la Integración (Manual)*. 2ª ed. Buenos Aires: BdeF, 2013. pp. 62-64; AMARAL JÚNIOR, Alberto do. *Curso de Direito Internacional Público.* 5ª ed. São Paulo: Atlas, 2015. pp. 453-461.

[12] O novo regionalismo, forma de multilateralismo surgida a partir das exigências impostas pela globalização, a partir dos anos 80, apresenta, como principais características: a) a liberalização comercial ampla com reduções tarifárias automáticas; b) a integração dos mercados; c) a inclusão de matérias distintas às do comércio; d) a baixa institucionalização e a existência de sistemas de solução de controvérsias. (CZAR DE ZALDUENDO, Susana. "Integración: nociones generales. Integración económica e integración regional". In: NEGRO, Sandra (Dir.) *Derecho de la Integración (Manual)*. 2ª ed. Buenos Aires: BdeF, 2013. p. 23.)

[13] A Venezuela ingressou ao MERCOSUL depois da suspensão aplicada ao Paraguai, que o impediu de participar nos órgãos decisórios do bloco, enquanto não fosse reestabelecida a ordem democrática no país, supostamente rompida após a destituição do ex-presidente Lugo. O tratado que incorporou o país ao bloco se encontra vigente desde 14/1/2014, data na qual o Paraguai finalmente depositou o instrumento de ratificação.

[14] STIGLITZ, Gabriel. "El derecho del consumidor en Argentina y en el MERCOSUR". In: *La Ley*. Tomo 1995-B. p. 1371.

closer their legislation on competition and consumer protection.[15] Concomitantly, they stated the common intention to raise national rules of consumer protection at least in accordance with international standards.[16] This Declaration is in line with provisions of Article 1 of the Treaty of Asuncion establishing the commitment of States Parties to harmonizing their legislation in relevant areas in view of strengthening the integration process.

In the course of 25 years[17], Mercosur has been fully engaged in creating standards to diminish negative legislative discrepancies. In this connection, the CT 7 has played a prominent role, as we will point out in the next section.

4. The competence of Technical Committee 7

The institutional concern for consumer protection gained room within the Common Market Group from the creation of Working Sub-group 10, linked to the Coordination of Macroeconomic Policies.[18]

It gave birth to the Committee on Consumer Law Studies, which in 1994 was transformed into Technical Committee of the MERCOSUR Trade Commission, a body created in the bloc under the Ouro Preto Protocol. Similar agreement is complementary to Asuncion Treaty. Taking into account that the Internal Regulation of the Mercosur Trade Committee provides for creating a specialized Technical Committee to regulate[19]

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[15] Ata da Reunião de Ministros de Economia de 23/4/1994, item 2 "Coordenação de políticas macroeconômicas e intercâmbio comercial entre os países membros", parágrafo 2º. Disponível em: http://gd.mercosur.int/SAM/GestDoc/PubWeb.nsf/ListadoReunRealizadas?OpenForm&lang=POR, acesso em 17/1/2016.

[16] BOURGOIGNIE, Thierry. *Op. cit.* p. 47.

[17] A respeito das fases pelas quais passou o MERCOSUL durante a sua existência, relacionadas às iniciativas destinadas a proteger o consumidor, ver: MARQUES, Cláudia Lima. "Consumer protection policy in MERCOSUR: an evolution". In: BOURGOIGNIE, Thierry. *Regional Economic Integration and Consumer Protection.* Québec: Ivon Blais, 2009. pp. 368-379.

[18] Com a instituição da Comissão de Estudos, em abril de 1993, começaram os trabalhos de harmonização legislativa sobre o direito do consumidor no Subgrupo nº 10 do GMC. Este Subgrupo deveria elaborar um documento denominado "Pautas Básicas de Defesa do Consumidor no MERCOSUL" e um grupo de normas básicas, não exaustivas, que estabelecessem um padrão mínimo comum na matéria. (MARQUES, Cláudia Lima. "Direitos do consumidor no MERCOSUL: algumas sugestões frente ao impasse". In: *Revista de Direito do Consumidor*. Nº 32. Out./dez. 1999. p. 22.)

[19] A respeito da possibilidade do MERCOSUL legislar sobre direito do consumidor, é interessante destacar que o Tratado de Assunção e o Protocolo de Ouro Preto não atribuíram, expressamente essa competência ao bloco. Na prática, adopta-se a teoria da competência implícita *(implied power)* para embasar os trabalhos que foram sendo feitos. (MARQUES, Cláudia Lima. "Regulamento comum de defesa do consumidor do MERCOSUL – Primeiras observações sobre o MERCOSUL como legislador da proteção do consumidor". In: *Revista de Direito do Consumidor.* Nº 23-24. Jul./Dez. 1997. p. 89.)

and safeguard the consumer protection, the powers previously assigned to the Consumer Law Studies Committee were transferred to the CT 7.[20]

Thus, since its inception on February 15, 1995,[21] the CT 7 has been the chief body in charge of establishing proposals for legislative harmonization in the bloc aiming to improve and develop the consumer protection in Mercosur. This goal presupposes a broad participation and support of national consumer protection agencies of member states, working on the basis of exchange of information on specific matters between law enforcement authorities.

The CT 7 has discussed the following subjects: a) proposals and projects for legislative harmonization; b) practical actions towards consumer protection; c) exchange of information and know how on states' projects and policies; d) institution of regulatory framework; e) consumer education and protection measures; f) implementing policies to further integration and improve the rights and interests of consumer of the region.[22]

This Technical Committee proposes resolutions which are submitted to public consultation before their adoption by the Common Market Group. The procedure accomplished is transparent to deal with criticisms and suggestions coming from the Mercosur members.[23]

5. The main the CT 7 contributions for international consumer protection

Since 1995, the CT 7 has arduously worked on the task to harmonize regional legislations. As a result of this work there are plentiful resolutions adopted by the Common Market Group that is an evidence of this body activity. Nonetheless, its work is not limited to that kind of innovation as we will intend to demonstrate.

5.1 1995-2010 contributions

Thanks to a great variety of initiatives, describing in detail the CT 7 actions is quite difficult. By way of illustration, we will underline the following:

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[20] MARQUES, Cláudia Lima. "Direitos do consumidor no MERCOSUL: algumas sugestões frente ao impasse". *Op. cit.* p. 20.

[21] O CT nº 7 foi criado pela Diretiva nº 1/1995 da CCM. Disponível em: http://www.mercosur.int/innovaportal/v/703/2/innova.front/directivas_1995, acesso em 7/1/2016.

[22] MINISTÉRIO DA JUSTIÇA. SECRETARIA NACIONAL DO CONSUMIDOR. SENACON. *Manual de Defesa do Consumidor. MERCOSUL e Peru.* Brasília: MJ, 2015. p. 23.

[23] Ver Ata nº 4, da LXXII Reunião Ordinária do CT nº 7, Anexo IV (Proposta de Curso MERCOSUL de Defesa do Consumidor). Brasília, 6 e 7/12/2012. Disponível em: http://www.mercosur.int/innovaportal/v/383/2/innova.front/busqueda_avanzada, acesso em 7/1/2016.

a) The Common Regulation for Consumer Protection.

On November 29, 1997, the Protocol for Consumer Protection in Mercosul, containing unified standards, came to the fore. It disciplined the consumer rights without indicating procedural instruments to safeguard their implementation. Without addressing the international consumer relation, the text in question regulates the consumer material rights without pointing any procedure to make those rights effective.[24]

Drawn on 5 resolutions[25] discussed in Fortaleza, that measure was object of critiques on the part of the Brazilian government insofar as protocol guarantees consumer rights far lower than those enshrined in the Brazilian law. During the 15th meeting of the Mercosur Trade Commission, held in Montevideo, on December 9 and 10, 1997, the said protocol was then rejected.

Thereby, resolutions already indicated could not enter into force.

Since then, the CT 7 had to renew its work on the drafting of legal instruments that brought together minimum guidelines instead of extensive and detailed rules.[26]

b) The Santa Maria Protocol on international jurisdiction on Consumer relations

In conformity with Decision nº 10, the Mercosur Common Market adopted the Protocol on International Jurisdiction of Consumer Relations, on November 22, 1996.

The Protocol regulated the international jurisdiction for contracts[27] with consumers, limiting its scope to contracts of credit sale, supply of tangible goods,

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[24] MARQUES, Cláudia Lima. "Regulamento comum de defesa do consumidor do MERCOSUL – Primeiras observações sobre o MERCOSUL como legislador da proteção do consumidor". *Op. cit*. p. 102.

[25] As resoluções que formam parte do Projeto de Protocolo são: a) Resolução nº 123/1996, sobre qualificação de consumidor, fornecedor, relação de consumo, produto e serviço; b) Resolução nº 124/1996, sobre direitos básicos do consumidor; c) Resolução nº 125/1996, sobre o nível de qualidade, riscos, saúde e segurança de produtos e serviços; d) Resolução nº 126/1996, sobre a publicidade enganosa e abusiva; e) Resolução nº 127/1996, sobre garantia contratual.

[26] Sobre o tema, ver: VIEIRA, Luciane Klein. *Protección Internacional del Consumidor. Procesos de Escasa Cuantía en los Litigios Transfronterizos.* Montevideo-Buenos Aires: BdeF, 2013. pp. 61-64.

[27] Críticas a esta delimitação material podem ser vistas, em: KLAUSNER, Eduardo Antônio. "Jurisdição internacional em matéria de relações de consumo no MERCOSUL – sugestões para a reedição do Protocolo de Santa Maria". In: *Revista de Direito do Consumidor.* Nº 54. Abr./Jun. 2005. pp. 122-123.

provision of services, including loans and other credit operations. Article 1 excludes contracts of carriage. It is silent about consumer relations through public means.[28]

To be applied both supplier and consumer must have domicile in different member states of Mercosur or whether they have domicile in the same country, the most characteristic performance of consumer relation is carried out in another state of Mercosur. Yet, to define the international nature of consumer relation is required an advertising or a proposal in the consumer's domicile as well as the making of a contract in his domicile (article 2).[29]

As regards the jurisdiction, the Protocol sets forth as a general rule the possibility for a consumer to lodge a judicial action where he has a permanent domicile (Article 4) given the huge obstacles of a foreign law-suit.[30]

Moreover, it provides concurrent alternative jurisdictions for the benefit of consumer, for instance, the jurisdiction of the states' courts in which the contract was concluded, of the service provision, of delivery of goods, of the defendant domicile, since they belong to countries with reasonable links with the consumer relation.[31]

Yet, the Protocol foresees rules on the effectiveness of foreign sentences, in consonance with Article 11 and following, being that cooperation will be conducted by Central Authorities.[32]

However, despite its vanguard nature, the Santa Maria Protocol has ever entered into force since Article 18 subordinates its validity to the effectiveness of the Common Regulation of Consumer Protection.

c) The Inter-institutional Agreement between Bodies of Consumer Protection of Mercosur member states on Behalf of Visitor Consumer

Such agreement was approved on June 3, 2004, in Buenos Aires, Argentina.[33]

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[28] ALL, Paula M. "MERCOSUR". In: FERNÁNDEZ ARROYO, Diego P. (Ed.) *Consumer Protection in International Private Relationships – La Protection des Consommateurs dans les Relations Privées Internationales.* Asunción: CEDEP, 2010. p. 627.

[29] DREYZIN DE KLOR, Adriana; URIONDO DE MARTINOLI, Amalia; NOODT TAQUELA, María Blanca. "Dimensiones convencional e institucional de los sistemas de jurisdicción internacional de los Estados mercosureños". In: FERNÁNDEZ ARROYO, Diego P. (Coord.) *Derecho Internacional Privado de los Estados del MERCOSUR.* Buenos Aires: Zavalia, 2003. pp. 198-199.

[30] WEHNER, Ulrich. "Contratos internacionais: proteção processual do consumidor, integração econômica e internet." In: *Revista de Direito do Consumidor.* Nº 38. Abr./Jun. 2001. p. 156.

[31] TELLECHEA BERGMAN, Eduardo. *La Dimensión Judicial del Caso Privado Internacional en el Ámbito Regional.* Montevideo: Fundación de Cultura Universitaria, 2002. p. 92.

[32] Sobre o tema, ver: VIEIRA, Luciane Klein. *Protección Internacional del Consumidor. Procesos de Escasa Cuantía en los Litigios Transfronterizos.* Op. cit. pp. 73-75.

Pursuant to Article 3, consumer tourists in the region will be advised and informed with regard their rights. Fast and efficient administrative mechanisms will be in force to settle disputes stemming from the consumer stay in a distinct state, taking account of rules of the host country.

At the meeting on August 16 and 17, 2012, the member states of Mercosur decided to start the phase of implementation of that agreement. The pilot project had the support of the Superintendence of Consumer Protection (PROCON's) of Rio de Janeiro and Sao Paulo.

On January 10, 2013, the PROCONs together with Consumer National Bureau (SENACON) officially lunched the Form[34] for Complaints of Visitor Consumer in conjunction with Uruguay and Venezuela.

Once lodged a claim, authorities of both countries shall remain in contact for information exchange and cooperation in pursuit of a mutually satisfactory agreement.

In subsequent meetings of the CT 7, from 2013 onwards, other tourist destinations adhered to the pilot project, namely, the Autonomous City of Buenos Aires, San Carlos de Bariloche, Curitiba, Porto Alegre, Natal and Fortaleza.

5.2 The legacy from 2011 to 2015

From 2011 on, there has been a great intensity of movement in the development of projects and policies by the CT # 7. Many of these projects born of the Statute of Citizenship of Mercosur, approved by Decision nº 64-2010 of the Mercosur Common Group. It established the need to create, before the conclusion of that Statute, which would culminate on March 26, 2021, a System of Mercosur Consumer Protectio comprising: a) a Mercosur Information System and Consumer Protection; b) a regional action of capacity-building, represented by the creation of the Consumer Protection Mercosur School; and c) the drafting of Mercosur standards for international consumer contracts. For instance:

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[33] MERCOSUR/LV GMC/DI nº 12/2004. Disponível em: http://www.mercosur.int/msweb/SM/DefCons/es/Acu_Def_Cons_Vis_ES.pdf, acesso em 19/1/2016. (Vigente.)

[34] O formulário que deverá ser apresentado pelo consumidor turista está disponível em: http://www.procon.sp.gov.br/noticia.asp?id=3365; http://www.indepabis.gob.ve/MERCOSUR; http://www.consumidor.gub.uy/informacion/index.php?SectionCode=MENU&IndexId=433, ambos acessados em 7/2/2014.

a) **The Draft Agreement on Applicable Law Relating to International Consumer Contracts**.

The Brazilian delegation presented a draft resolution to Mercosur Common Group on law applicable to international consumer contracts during the regular meeting of the CT 7 on August 18 and 19, 2010, in Rio de Janeiro.

Analyzed, revised and extended in the following meetings of the CT 7, this draft had four different versions.[35] Approved as Decision Project nº 15/2012, the latest version contains the Mercosur Agreement on the Applicable Law to International Consumer Contracts.[36]

Its first articles are dedicated to qualifications and to contracts which were excluded.[37]

With respect to the applicable law, Article 4, that governs the contracts concluded by the consumer, the latter being in the state of domicile, employs alternative connection elements, such as the consumer's domicile, place of conclusion or execution of the contract and headquarters of the supplier of goods or services, allowing the parties to choose the applicable law. In the absence of a valid election or lacking the exercise of this right, the rule provides for the application of the law of the consumer's domicile, since it is presumed to be the most favorable rule to the vulnerable party of the contractual relation.

Regarding the applicable law, Claudia Lima Marques points out that the law chosen in the adhesion contracts ought to be compared to that of the consumer's domicile law and, in case of conflict, the judge should opt for the most favorable law to the latter. According to the author, we seek a pedagogical effect in the sense that suppliers choose barely the most favorable law in a adhesion contract, which is presumably that of the consumer's domicile. A judge must apply only the most

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[35] Comentários às quatro diferentes versões do Projeto referido podem ser encontrados em: VIEIRA, Luciane Klein. "El Proyecto de Acuerdo del MERCOSUR sobre Derecho Aplicable en Materia de Contratos Internacionales de Consumo". In: *Revista de Direito do Consumidor*. Nº 99. Mai./Jun. 2015. pp. 159-179.

[36] Ver Ata nº 3 da LXXXIX Reunião Ordinária do GMC. Anexo III. Cuiabá, 18/10/2012. Disponível em: http://www.MERCOSUR.int/innovaportal/file/4945/1/gmc_2012_ata03_pt.pdf, acesso em 19/1/2016.

[37] Conforme o art. 3º da norma em comento, estão excluídos os contratos comerciais entre fornecedores profissionais de bens e serviços, as questões derivadas do estado civil das pessoas e da capacidade das partes, as obrigações contratuais que tiverem como objeto principal questões sucessórias, testamentárias, regime matrimonial de bens, entre outras.

beneficial law or, if necessary, to decide grounded in the law of the consumer's domicile.[38]

In turn, Article 5 is intended to regulate contracts concluded by the consumer, being this out of his state domicile. For contracts concluded by tourist consumer is equally permitted to choose the applicable law whether the parties opt for the law in force where the contract was made or executed or for the law of the consumer's domicile. The choice is sole valid if the law is the most favorable to the vulnerable party. The law of the place of contract shall be applied in case of absence or invalidity of the law previously chosen.

Still, the Project provides the need for electing the applicable law in writing, after the parties' consent and knowledge. Likewise, in the adhesion contracts the law that the supplier chooses should be clearly expressed through information to consumer, as well as in the contract itself, with the goal to secure transparency and legal certainty.

The law in force in the state of the consumer' domicile must be applied to travel and tourism contract, concluded in tourist packages or combined services, provided that such contracts have the place of performance outside that state (Article 7).

Unfortunately, we observe that the course of the project is paralyzed due to divergences pointed by the Venezuela delegation, which have interest in revising the entire proposal.

b) Resolution nº 34/2011 on Basic Concepts in Consumer Law

The Extraordinary Meeting of the Common Market Group, held in Montevideo, approved Resolution nº 34 on basic concepts in consumer protection,[39] on December 17, 2011. That Resolution adopts definitions and concepts applicable to consumer relations within member states[40], employing uniform qualifications to consumer, supplier, consumer relations, products, services and binding offer and the information duty, as corollary of the intrinsic obligation of transparency.

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[38] MARQUES, Cláudia Lima. "Comércio eletrônico de consumo internacional: modelos de aplicação da lei mais favorável ao consumidor e do privilégio de foro". In: FONSECA, Patrícia Galindo da; RAMOS, Fabiana D'Andrea; BOURGOIGNIE, Thierry (Orgs.) *A Proteção do Consumidor no Brasil e no Quebec: diálogos de direito comparado. La Protection du Consommateur au Québec et au Brésil: échanges de droit compare.* Niterói: Editora da UFF, 2013. p. 180.

[39] MERCOSUR/GMC/RES. nº 34/2011. Publicada em: *Boletín Oficial del MERCOSUR*. Nº 48. Disponível em: http://www.mercosur.int/innovaportal/v/3186/2/innova.front/resoluciones_2011, acesso em 3/8/2015.

[40] VIEIRA, Luciane Klein. *Protección Internacional del Consumidor. Procesos de Escasa Cuantía en los Litigios Transfronterizos.* Op. cit. pp. 64-65.

Thus, in accordance with Article 1 (a) "Consumer is any natural or legal person who acquires or uses products or services in the gratuitous or onerous way as a final recipient, in a consumer relation or as result or because of it. Consumer is not considered who do not constitute final recipient that acquires, stores, uses, or consumes products or services in order to integrate them as input directly to other products or services in the production process, processing, marketing or provision to third parties".

As can be seen, it is quite broad the autonomous qualification that Mercosur adopts to the extent it is based on finalist theory by considering consumer as final recipient of products and services purchased, without excluding the bystander or as assimilated consumer.[41]

c) The Products and Services Alert Protocol Project considered Potentially Harmful or Dangerous

The meeting of the CT 7, held in Brasilia, began to debate a minute of a Protocol on Recall of Products and Services[42] on May 21, 2015.

That project reveals the concern of the CT 7 with the need to call consumers and withdrawal of products and services that have been put into the market, which may pose a risk to consumer health and safety when they can cause consumption accidents.

Thus, the protocol project provides in Article 3 the supplier's duty to provide, after taking cognizance about the harmfulness or dangerousness of a product or service, report it immediately in writing to the national protection agencies to the consumer of the states and the regulatory bodies involved, describing, among others, the defect and risks as well as indicating the geographical distribution of the product or service and steps that have been and will be taken. The project also warns that the direct individual communication to consumer, through websites, does not extinguish the supplier' obligation to collective communication about the harmfulness and dangerousness of the products that were put into the market (Article 6, Paragraph 3). Further, pursuant to the project, the supplier has the obligation to send reports to national regulatory agencies for consumer protection, with a maximum time frame of 60 days, communicating the amount of recalled or repaired services, their geographical distribution and the number

[41] Não obstante a importância da Resolução mencionada, a mesma, ainda, carece de vigência.
[42] O inteiro teor do Projeto pode ser consultado em: Ata nº 01/2015 da LXXVII Reunião Ordinária do CT nº 7, Anexo VI. Brasília, 21 e 22/5/2015. Disponível em: http://www.mercosur.int/innovaportal/v/383/2/innova.front/busqueda_avanzada, acesso em 19/1/2016.

of affected consumer, while mentioning additional measures relative to products that have not been collected or repaired (Article 8).

d) The School of Consumer Protection in Mercosur

As referred at the inception, the Statute of Mercosur Citizenship determines that the creation of Mercosur System for Consumer Protection shall be composed of a regional action of capacity-building, represented by the School for Consumer Protection in Mercosur.

This school began to be generated from the ordinary meeting of the CT 7, which took place in the city of Buenos Aires, on April 12 and 13, 2012.

Afterwards, the meeting of the CT 7 approved the proposal of a course for consumer protection[43] on the basis of a handbook especially conceived to this end, on December 6 and 7, in Brasilia. That handbook[44] was officially lunched at the ordinary meeting of the Mercosur Group, in August, 2015, In Brasilia, On that occasion, member states decided to announce the Mercosur Online Courses for Consumer protection.

Of note, the Mercosur School for Consumer Protection finds itself in an implementation phase being expected positive results in the short run, such as regional actions of capacity-building and the consumer awareness on their rights.

6. Conclusions and perspectives

To deepen an economic integration, it is indispensable to put into practice measures protecting the consumer who acquires or uses foreign products or services without leaving his home state.

In that vein, the CT 7 plays a fundamental role constituting a touching stone of the process aimed at harmonizing legislations. In search for safety, transparency and predictability to consumer. The CT 7 approved many projects which did not become binding either by national governments desinterests, unpreparedness, divergences or negligence.

Surely, in this scenario of back and forth, an unprotected consumer consumes less. Hence, the GDP diminishes. Regional integration is reduced and weakened. Then,

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[43] Ver Ata nº 4/2012 da LXXII Reunião Ordinária do CT Nº 7. Anexo IV. Brasília, 6 e 7/12/2012. Disponível em: http://www.mercosur.int/innovaportal/v/383/2/innova.front/busqueda_avanzada, acesso em 19/1/2016.

[44] Ver a versão bilíngue do manual mencionado em: MINISTÉRIO DA JUSTIÇA. SECRETARIA NACIONAL DO CONSUMIDOR. SENACON. *Op. cit.* 414 págs.

International trade experiences a negative impact as a consequence of the drop in economic exchanges. We expected that projects indicated above gain strength in a way Mercosur serve as a reference to other integration projects in terms of favoring cross-border consumer to decisively influence national laws.

Bibliography:

ALL, Paula M. "MERCOSUR". In: FERNÁNDEZ ARROYO, Diego P. (Ed.) *Consumer Protection in International Private Relationships – La Protection des Consommateurs dans les Relations Privées Internationales.* Asunción: CEDEP, 2010.

AMARAL JÚNIOR, Alberto do. *Curso de Direito Internacional Público.* 5ª ed. São Paulo: Atlas, 2015.

BOURGOIGNIE, Thierry. "Integración regional y la protección del consumidor en las Américas y en Europa". In: BOURGOIGNIE, Thierry (Dir.). *Intégration Économique Régionale et la Protection du Consommateur.* Cowansville-Québec: Éditions Yvon Blais, 2009.

CZAR DE ZALDUENDO, Susana. "Integración: nociones generales. Integración económica e integración regional". In: NEGRO, Sandra (Dir.) *Derecho de la Integración (Manual).* 2ª ed. Buenos Aires: BdeF, 2013.

DREYZIN DE KLOR, Adriana; URIONDO DE MARTINOLI, Amalia; NOODT TAQUELA, María Blanca. "Dimensiones convencional e institucional de los sistemas de jurisdicción internacional de los Estados mercosureños". In: FERNÁNDEZ ARROYO, Diego P. (Coord.) *Derecho Internacional Privado de los Estados del MERCOSUR.* Buenos Aires: Zavalia, 2003.

FELLOUS, Beyla Esther. *Proteção do Consumidor no MERCOSUL e na União Europeia.* São Paulo: Revista dos Tribunais, 2003.

KLAUSNER, Eduardo Antônio. "Jurisdição internacional em matéria de relações de consumo no MERCOSUL – sugestões para a reedição do Protocolo de Santa Maria". In: *Revista de Direito do Consumidor.* Nº 54. Abr./Jun. 2005.

MARQUES, Cláudia Lima. "Comércio eletrônico de consumo internacional: modelos de aplicação da lei mais favorável ao consumidor e do privilégio de foro". In: FONSECA, Patrícia Galindo da; RAMOS, Fabiana D'Andrea; BOURGOIGNIE, Thierry (Orgs.) *A Proteção do Consumidor no Brasil e no Quebec: diálogos de direito comparado. La Protection du Consommateur au Québec et au Brésil: échanges de droit compare.* Niterói: Editora da UFF, 2013.

MARQUES, Cláudia Lima. "Consumer protection policy in MERCOSUR: an evolution". In: BOURGOIGNIE, Thierry. *Regional Economic Integration and Consumer Protection.* Québec: Ivon Blais, 2009.

MARQUES, Cláudia Lima. "Direitos do consumidor no MERCOSUL: algumas sugestões frente ao impasse". In: *Revista de Direito do Consumidor*. Nº 32. Out./dez. 1999.

MARQUES, Cláudia Lima. "Regulamento comum de defesa do consumidor do MERCOSUL – Primeiras observações sobre o MERCOSUL como legislador da proteção do consumidor". In: *Revista de Direito do Consumidor.* Nº 23-24. Jul./Dez. 1997.

MINISTÉRIO DA JUSTIÇA. SECRETARIA NACIONAL DO CONSUMIDOR. SENACON. *Manual de Defesa do Consumidor. MERCOSUL e Peru.* Brasília: MJ, 2015.

RIBEIRO, Bruno Marques; ZORDAN, Fernando Henrique Zorzi. "A necessidade da harmonização legislativa no MERCOSUL para a proteção jurídica do consumidor". In: MENEZES, Wagner (Coord.) *Estudos de Direito Internacional – Anais do 4º Congresso Brasileiro de Direito Internacional – 2006.* Vol. VI. Curitiba: Juruá, 2006.

RUIZ DÍAZ LABRANO, Roberto. *Derechos del Consumidor y del Usuario de Servicios. Ley nº 1334/98 de Defensa del Consumidor y del Usuario.* Asunción: La Ley, 2014.

SCOTTI, Luciana B. "El derecho de la integración en el MERCOSUR". In: NEGRO, Sandra (Dir.) *Derecho de la Integración (Manual).* 2ª ed. Buenos Aires: BdeF, 2013.

STIGLITZ, Gabriel. "El derecho del consumidor en Argentina y en el MERCOSUR". In: *La Ley.* Tomo 1995-B.

TELLECHEA BERGMAN, Eduardo. *La Dimensión Judicial del Caso Privado Internacional en el Ámbito Regional.* Montevideo: Fundación de Cultura Universitaria, 2002.

VIEIRA, Luciane Klein. "El Proyecto de Acuerdo del MERCOSUR sobre Derecho Aplicable en Materia de Contratos Internacionales de Consumo". In: *Revista de Direito do Consumidor.* Nº 99. Mai./Jun. 2015.

VIEIRA, Luciane Klein. *Protección Internacional del Consumidor. Procesos de Escasa Cuantía en los Litigios Transfronterizos.* Montevideo-Buenos Aires: BdeF, 2013.

WEHNER, Ulrich. "Contratos internacionais: proteção processual do consumidor, integração econômica e internet." In: *Revista de Direito do Consumidor.* Nº 38. Abr./Jun. 2001.