

Regulation of E-commerce in the MERCOSUL:

A Brief Introduction

The MERCOSUL (or the South American Common Market Agreement, according to its Portuguese acronym; in Spanish, “MERCOSUR”), created in 1991 as one of the most important Latin American regional economic blocks, consists of member countries Brazil, Argentina, Paraguay, Uruguay, Chile, and Bolivia. The latter two countries joined MERCOSUL in 1996 and 1997, respectively.

The Treaty of Asunción is MERCOSUL’s most important legal document. Brazil, Argentina, Paraguay and Uruguay signed this treaty on March 26, 1991, in the Paraguayan capital. The main objective of the Treaty of Asunción is to create a regional common market with free transit of goods, services, and means of production across and among the MERCOSUL member states.

As a practical matter, MERCOSUL began to operate as a customs union (i.e., a duty free zone) on January 1st, 1995, as between the four original member states. Currently, through the application of the Treaty of Asunción’s requirements, fully 95% of the trade among MERCOSUL member states is duty free. There is a defined External Common Fee (TEC) applicable to MERCOSUL members that varies between 0% and 20% .

The Protocol of Ouro Preto created MERCOSUL’s institutional structure in 1994. The Protocol confers institutional legal capacity to MERCOSUL, allowing it to negotiate as an entity with third countries, other regional trading and economic groups, and with international organizations.

The MERCOSUL’s Common Market Council (CMC), is the bloc’s chief institutional entity, which sets policy for the advancement of economic integration among the member states, and is charge of making decisions in furtherance of those policies. The Presidency of the CMC rotates every six months. For the first half of 2005, Uruguay holds the Presidency *pro tempore*.

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Although the MERCOSUL was initially envisioned as an economic entity, whose objective was the free transit of goods, services, and means of production among its member states, given the size of its market, it has now acquired a political dimension, with significant influence in Latin America.¹ In fact, the tariff and economic discussions among MERCOSUL countries have engendered various treaties and negotiations among the member countries.

Electronic Commerce as an Objective within MERCOSUL

MERCOSUL's member states have placed the issue of e-commerce high on their common agenda, given its importance in generating commerce, and the need to address growing digital economy. MERCOSUL is currently analyzing e-commerce within the bloc, along with the obstacles to its greater implementation, and solutions to overcome those obstacles.

Within MERCOSUL's institutional framework, the CMC has authorized the Common Market Group (GMC), to act as its executive body for policy. The GMC tasks and takes recommendations from the working subgroups, or "Subgrupos de Trabalho" (commonly known as "SGTs"), which are organized around various issues of commercial and economic endeavor. The GMC may adopt SGT recommendations as Resolutions for the bloc. The SGTs, in turn, to facilitate their role as advisory committees, meet quarterly, in the country that hosts the rotating Presidency pro tempore of the CMC.

The CMC created 14 active SGTs. SGT-13 is the advisory committee assigned to e-commerce issues for MERCOSUL. Among the SGT-13' objectives are, (i) coordinating of the state members' national policies regarding e-commerce and its related topics; (ii) straightening the e-commerce relationship among MERCOSUL members; (iii) improving of the e-commerce regulatory framework; and (iv) developing e-commerce relations among the member states. The SGT-13 meets quarterly, in the country of the Presidency pro tempore. Brazil hosted the September 13, 2004 meeting in Rio de Janeiro.

¹ For example, on the Website of the Brazilian Ministry of Foreign Relations (www.mre.gov.br), and on similar Websites of the other member countries, one may find various texts of various Resolutions and other of interest within Mercosul, as well as information regarding the agendas of past and upcoming meetings and negotiations.

Topics on the agenda for SGT-13 in 2004-2005 include, among others, digital signatures in MERCOSUL transactions and personal data protection. In 2004, SGT-13 finalized discussions, begun in 2003, regarding the vendor rights to customer information in e-commerce transactions.

Besides the above topics, SGT-13 is currently analyzing the relationship between MERCOSUL and the European Union, with particular regard to digital signatures; various methods for payment in Internet transactions; consumer data protection; and payment verification safeguards for small and medium-sized businesses (known in Spanish by the acronym, "PYMES"), which play a critical role in the economies of the MERCOSUL member states.

SGT-13's first two quarterly meetings in 2005 will take place in Uruguay, where the Presidency pro-tempore will reside for the first half of the current year.

Apart from the role of the various member state governments, the private sector has also taken an active role within SGT-13. For example, the Brazilian Chamber of E-commerce, also known as "Camara-e.net," representing one of Brazil's, and Latin America's, most important, multi-sector bodies devoted to the Digital Economy, has participated in various international forums on E-commerce, including meetings of SGT-13 (more information may be found at www.camara-e.net). Camara-e.net has, since its founding over three years ago, has had as its goal the discussion, formulation, improvement, and monitoring of policies related to Information Technology, high-tech communication, and the growth of the Digital Economy in Brazil.

Camara-e.net has actively participated in the SGT-13's meetings and discussions, together with the Official Brazilian Delegation from the Ministry of Development, Industry, and International Trade. Camara-e.net has been an important channel between the public and private sectors in Brazil on e-commerce issues, and on regional integration. Additionally, Camara-e.net promotes meaningful discussions in SGT-13 meetings, through the committees to which they are assigned. The group is an excellent resource for information on e-commerce in Latin America.

Conclusion

Electronic commerce, whose very nature is both international and borderless, will only develop when harmonic technical and legal regulations are implemented. This regulatory structure should only be implemented after a full and open debate and consideration of the different countries' opinions. Private and public sector input should always be considered when creating this regulatory framework.

The MERCOSUL countries are already developing this harmonizing and regulatory framework through the SGT-13 meetings, and the public and private sector discussions therein. The MERCOSUL countries in this way are pursuing simultaneous, collective, and individual efforts to resolve many of the crucial issues affecting e-commerce.

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