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Global Agribusiness Practice: A Discussion on Agroindustry in Brazil

AUGUST 12, 2020

Speakers



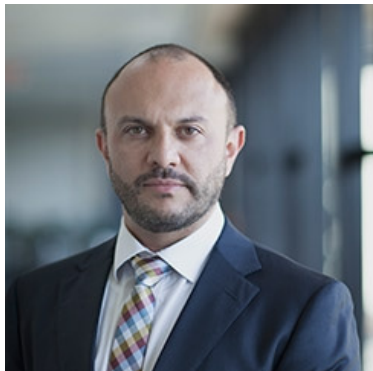
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Topics to be discussed:

- GT's agribusiness practice. Global and U.S. agricultural economy
- Infrastructure investment opportunities in the agroindustry sector
- Brazilian capacity in terms of available land for food production
- The new creditors' rights legislation passed by the Brazilian Congress

GT's Global Agribusiness Practice



- GT represents a diversified range of agribusiness clients, such as cooperatives, banks and hedge funds, governmental agencies, large equipment manufacturers and Fortune 500 companies.
- Ranked in Chambers Global; GT's Food & Beverage Group was named "Practice Group of the Year" by Law360.
- Over 250 GT attorneys have represented agribusiness clients throughout the supply chain in recent years.
- Our global capabilities include attorneys in the United States, the European Union, the United Kingdom, Mexico, Asia and the Middle East.

Brazilian and U.S. Agricultural Markets

BRAZIL

United States Department of Agriculture
Foreign Agricultural Service 

\$589 million

U.S. Agricultural Exports, 2019

#34

Among U.S.
Agricultural Export
Markets, 2019



Export Growth

2009-2019



Source: FAS Global Agricultural Trade System (GATS) BICO HS-10

- Brazil and the United States are the largest economies of the Western Hemisphere, and the United States is Brazil's second largest trading partner, behind Argentina.
 - In 2019, Brazilian imports of agricultural and related products totaled \$11.8 billion.
 - In 2019, the United States' market share of agricultural imports to Brazil was approximately ten percent.
 - The U.S. maintained its second position in the ranking of major suppliers of agricultural commodities to Brazil.
- <https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Food%20and%20Agricultural%20Import%20Regulations%20and%20Standards%20Country%20Report%20Sao%20Paulo%20ATO%20Brazil%2012-31-2019>

State of the U.S. Ag Economy

- U.S. agricultural imports in FY 2020 are projected at \$130.2 billion, down \$2.3 billion from the February forecast, primarily driven by expected decreases in imports of horticultural products such as beer, fresh fruit, and fresh vegetables.
 - The expected decreases in imports of horticultural products and oilseeds outweigh the expected increase in imports of sugar and tropical products from the February forecast.
 - While COVID-19 has led to some supply chain disruptions, particularly in the protein sector, there has generally not been increased enforcement actions by banks and other financial institutions yet with respect to foreclosures.
- <https://www.ers.usda.gov/webdocs/outlooks/98517/aes-112.pdf?v=3741.9>



U.S. Agricultural Commodities – Highly Segmented



The production, marketing and distribution practices vary by commodity in the United States.

- For instance, arbitration rules promulgated by the National Feed and Grain Association govern many disputes arising from grain transactions.
- Other product-specific trade organizations include: the American Poultry Association, the International Dairy Foods Association and the National Sunflower Association.
- Bankers, investors, lawyers and other market participants usually attend annual conferences hosted by these specific trade organizations to network and track industry developments.



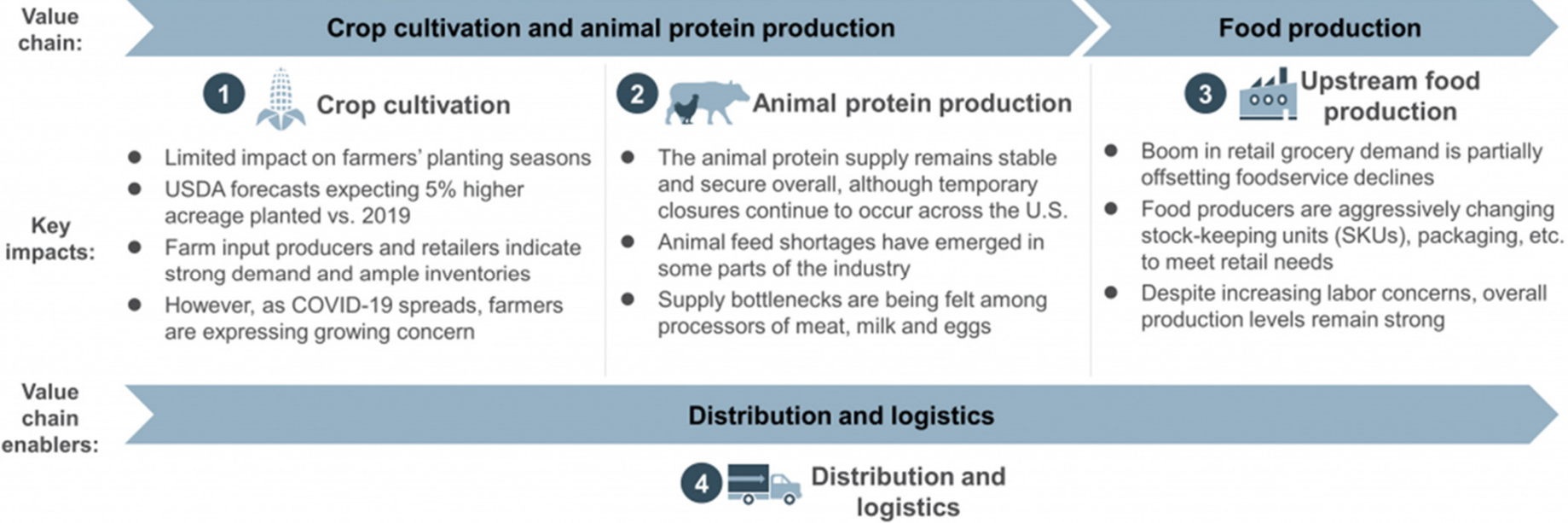
Unique Agribusiness Considerations

- Weather
- Tariffs
- Commodity prices
- Recalls
- Collateral (crops, livestock, insurance proceeds, government subsidies, wetland credits, etc.)
- Federal and State Laws



Impact of COVID-19 on U.S. Agribusinesses

COVID-19 is impacting the agribusiness value chain in varying and dynamic ways



Impact of Tariffs on U.S. Agricultural Goods

- Amid the global economic contraction, increases in U.S. agricultural exports have been limited, particularly with respect to China.
 - In response to U.S. Section 232 and Section 301 actions, China levied retaliatory tariffs on almost all U.S. agricultural products, ranging from 5% to 50%.
 - Exports to China increased slightly from the same time a year ago, but were well below levels reached during this time in 2017.
 - Exports to all other destinations increased from a year ago and remained slightly higher than 2017, but not enough to offset the reduction in exports to China.
- <https://www.kansascityfed.org/en/research/agriculture>



Geopolitical Implications

The agribusiness industry is global in scope, and therefore, the industry is impacted by most political and economic events impacting the world economy.

Tariffs are a recent example. U.S. is the largest global producer in the global agribusiness market, and China is the largest global consumer of agricultural products. Thus, the trade war between the United States and China has caused a significant disruption in the food chain.

Covid-19 pandemic also created both problems and opportunities in agribusiness.

Most importantly, as a global business, participants in the agribusiness industry must assess the risks of doing business in a particular country or jurisdiction. Some countries, such as the United States, have well developed laws and business practices.

The new creditors' rights legislation in Brazil aims to provide similar transparency in litigation and insolvency.



Agribusiness: Brazil

The Brazilian agribusiness is a long-time player of the world trade and the greatest booster of the Brazilian trade balance. The country is among the leading producers of various commodities in the field, including coffee, sugar, orange, beef and soy.

The volume and complexity of agribusiness operations require wide legal expertise to those who intend to make business in the sector. Land aspects, such as the acquisition of rural land, demarcation, indigenous and quilombolas (descendants of Afro-Brazilian slaves) laws and areas require specialized and precise legal action to ensure protection to investments. Matters involving environmental licensing, product registration, as well as the wide spectrum of agricultural contracts challenge legal departments and practitioners. M&A projects require knowledge of the sector to provide key insights for successful transactions. Access to capital markets through the issuance of agribusiness bonds provides finance to companies compatible with the margins in the sector.

Agribusiness: Brazil

The current Brazilian scenario in the agribusiness sector:

- In 2019, the Agribusiness Gross Domestic Product in Brazil was R\$ 1.56 trillion, responsible for 21.4% of the Brazilian GDP;
- Agribusiness GDP grew by 3.81% in 2019 compared to 2018; and 4.62% accumulated from January to May 2020 in relation to the same period of 2019.

According to the 1990/1991 to 2019/2020 crop year survey carried out by the National Supply Company (CONAB), grain production in Brazil increased 334%, while the planted area increased only 71%.

Brazil's trade balance is positive only by virtue of agriculture. In 2018, the surplus was 58.6 billion dollars, but the agribusiness was much higher, 87.6 billion dollars, due to other sectors (industry and services).

All cultivated areas in Brazil with temporary, semi-perennial and perennial crops (grains, sugarcane, fruits and planted forests) occupy only 9% of the territory. About 72 million hectares.

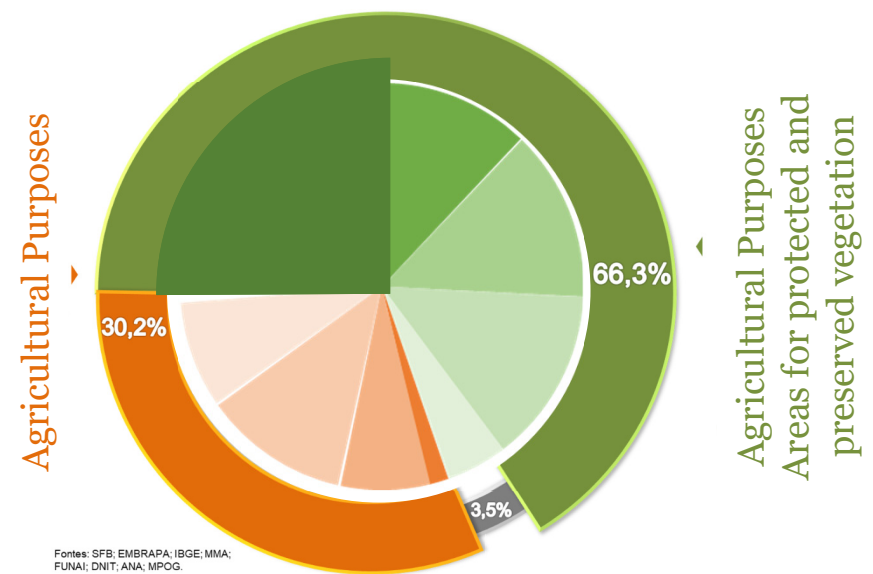
The protagonism assumed by Brazil, which is internationally recognized, led the United Nations (UN) to admit that the country will have to expand its food supply by 40% to serve the growing world population, which is expected to increase from the current 7 billion to more than 9 billion people by 2050.

Brazilian Territory

Out of the 851 million hectares of the Brazilian territory, approximately 66.3% or 631,758,477 hectares are covered with native vegetation.

CATEGORIES	AREA (ha)	% OF THE BRAZILIAN AREA (2018)
Areas for the preservation of native vegetation registered in the Brazilian Rural Environmental Registry (CAR) – livestock, agriculture, forestry, extractivism, among others.	218.245.801	25,6
Integral Conservation Units	88.429.181	10,4
Indigenous territory	117.338.721	13,8
Native Vegetation on vacant public and not registered land	139.722.327	16,5
Native Pastures	68.022.447	8,0
Planted Pastures	112.237.038	13,2
Ploughs	66.321.886	7,8
Planted Florests	10.203.367	1,2
Infrastructures, cities and others	29.759.821	3,5
TOTAL	850.280.588	100

Amount of areas for the protection and preservation of native vegetation and other land use and occupation in Brazil (2018)



Graphical representation of the Brazilian territorial extension including its several uses, land occupation, and areas destined for the preservation and protection of native vegetation in the country.

New Agribusiness Law: Brazil

JOINT GUARANTOR FUND - FGS

FGS is a type of guarantee:

Applicable to credit transactions carried out by rural producers, including those resulting from debt consolidation, and financing to implement and operate connectivity network infrastructure.

Objectives:

- Amplify the credit volume available to agribusiness;
- Ease financing;
- Rural producers' debt restructuring, in order to avoid default.

Quotaholders:

- At minimum, two **Debtors**, but the Executive Branch may impose new limitations;
- **Creditor**; and
- **Guarantor**, if any.
- Quotas shall be fully paid in cash and the tertiary quotas shall be paid in with the reduction of the debt balance of the creditor guaranteed by the FGS.

Quotas Structure:

FGS shall be comprised of **Primary Quotas** (to be held by Debtors), **Secondary Quotas** (to be held by Creditors) and **Tertiary Quotas** (to be held by Guarantor, if any), with different reimbursement and cash return rules to each quota.

New Agribusiness Law: Brazil

SEGREGATED ASSETS - IN RELATION TO RURAL REAL ESTATE

NEW FEATURES INTRODUCED BY THIS LAW:

- (i) Possibility to use a **FRACTION** of a rural property as guarantee, including the land, accessions and improvements, excluding plantations, movable assets or animals.
- (ii) Partial apportioning of a rural property allows that a real estate property registered under a specific real estate record file be fractioned to guarantee a debt, thus allowing the **USE OF A SAME REAL PROPERTY TO LEVERAGE ON SEVERAL DIFFERENT CREDIT LINES WITHOUT OVERLAPPING**.
- (iii) **Restrains: REAL ESTATE ENCUMBERED BY MORTGAGE, FIDUCIARY SALE OR ANY OTHER SECURITY INTEREST; SMALL RURAL PROPERTY, RURAL PROPERTY SMALLER THAN THE MINIMUM SIZE IN THAT REGION, ACCORDING TO THE LAW; and BEM DE FAMÍLIA.**
- (iv) Rural property, while subject to Segregated Assets, **MUST NOT BE** sold, donated or transferred in any way by the owner.
- (v) Segregated Assets **MUST BE BOUND TO A RURAL PROPERTY NOTE OR TO A RURAL PRODUCT NOTE.**
- (vi) Segregated Assets **WILL NOT BE AFFECTED** by **BANKRUPTCY, INSOLVENCY** or **JUDICIAL REORGANIZATION** of the rural property owner.

OBJECTIVE: amplify and foster the access of **rural land owners** to financial resources that would enable its activities



New Agribusiness Law: Brazil

SEGREGATED ASSETS - IN RELATION TO RURAL REAL ESTATE



Art. 7º The **rural property owner, legal entity or individual**, may submit his/her/its property, or part of it, to the segregated assets regime.

Single paragraph. Under the segregated assets established herein, the land, its accessions and improvements, except for plantations, movable assets or animals, shall be part of the segregated assets, which will be set aside to be the object of collaterals by way of the **Rural Product Note (CPR)**, under Law nº 8.929, from August 22, 1994, or by **Rural Property Note (CIR)**, in financial transactions structured to the benefit of the owner.



Opportunities: Brazil

- New Agribusiness Law in Brazil (giving incentives for private credit to agribusiness).
- New types of collateral and insolvency protections available to agribusiness lenders.
- New types of agribusiness negotiable instruments available to agribusiness lenders.
- New possibilities with CPRs (the negotiable instrument most commonly used in agribusiness in Brazil).
- Registration of CPRs before electronic systems and clearing systems (central depository of credit intelligence and fraud prevention).
- New possibilities with agribusiness negotiable instruments with foreign currency fluctuation provisions.
- New possibility for distribution and registration of CRA (Agribusiness Receivables Certificate) abroad with foreign currency fluctuation provision.
- New vintage of VC and PE investments in agribusiness.
- Cross-border agribusiness finance.

Relevant ongoing infrastructure projects

➤ Ports

- ✓ Investments in the total amount of BRL 7.18 billion, with the lease of 21 terminals and the concession of other 4 ports until the first quarter of 2023;
- ✓ The investments will involve relevant Brazilian ports such as the ports of Santos and Maceió.

➤ Highways

- ✓ Total investments in the amount of BRL 156,15 billion, with the concession of 20,775.4 km to the private sector until the fourth quarter of 2022;
- ✓ These investments also involve relevant Brazilian highways, among which BR-163 stands out, an important route for the flow of Brazilian agricultural products. Other important highways that should be granted in the coming years are: BR-381, BR-116 and BR-040, among others.

Relevant ongoing infrastructure projects

➤ Railways

- ✓ Investments in the total amount of BRL 64,40 billion, with new concessions (FIOL and Ferrogrão), renewals of existing contracts and other investments;
- ✓ Among these investments, the Ferrogrão Railway will be of great importance for the agricultural sector, allowing the flow of production from the Midwest region to the ports of the North region.

➤ Cabotage

- ✓ The Federal Government is working on the elaboration of a cabotage incentive program called *BR no Mar*, which shall reduce restrictions in order to allow foreign flag vessels in cabotage operations.
- ✓ Brazil has around 8.5 thousand kilometers of navigable coast and economically navigated waterways of approximately 22.037 thousand kilometers. However, MARITIME TRANSPORT represents only 16% of its transport modal. It is, therefore, a transport modal with great potential for expansion.

More Opportunities

- Recent trend for agribusiness consolidation (M&A)
- Recent direct investment (greenfield and brownfield) from agribusiness companies, agribusiness industries and trading companies.
- Agribusiness import and export
- New security interest over rural property to the benefit of foreign lenders.
- New AgTech opportunities
- Timber investments
- New carbon credits opportunities linked to agribusiness
 - Low carbon agriculture
 - Biofuels – including CBIOS

Questions?

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