Trench Rossi Watanabe.

DOING AGRIBUSINESS IN BRAZIL

2025

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An Overview

1 An Overview

1.1 Background

Brazilian history has been closely associated with the development of agribusiness in the country. Since the colonization by the Portuguese in the 16th century, agribusiness has been one of the decisive factors in the country's progress and development of its industry and economy. The exploitation of brazilwood (*Caesalpinia echinata*) for its red dye marked the beginning of economic activity in Brazil.

In the 17th century, plantations of sugarcane on large properties and the production of sugar for export to Europe represented the first large-scale agricultural business in the country. In the imperial period, the economic monoculture of sugarcane, which was concentrated in the northeast, was partially replaced by the exploitation of rubber trees and the cultivation of coffee, cacao and cotton in the southeast. The economic cycle of rubber led to the integration of the Amazon region with the rest of the country. Coffee, cotton and cacao introduced the southeast into the Brazilian economic scenario and entailed the parallel development of a local industry, in addition to the construction of railways and ports, as well as the European immigration to Brazil.

By the advent of the green revolution in the 20th century, Brazil had expanded its agricultural frontiers, modernizing agriculture and diversifying its products. Since then, the numbers of the agriculture production have increased exponentially. For example, in 1995, (i) the area under grain cultivation was 41.79 million hectares, (ii) the production was 69 million tons, and (iii) the export revenue was approximately USD 20 billion. In 2023 (i) the area under grain cultivation was 79.9 million hectares[1], (ii) the production was 297.8 million tons[2], and (iii) the export revenue was approximately USD 166.55 billion[3]. Within the period, Brazilian production increased 331.59% and its export revenue increased eightfold, affording the country a leading position in agribusiness. Furthermore, the National Food Supply Company (Companhia Nacional de Abastecimento or CONAB) estimates for 2024-2025 a production of approximately 322.3 million tons of grains[4], corresponding to an increase of 8.2% compared to the numbers of 2023-2024.

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[1] CONAB. Nova estimativa da Conab para safra de grãos 2024/2025 é de 322,53 milhões de toneladas. Available at: https://www.conab.gov.br/ultimas-noticias/5821-nova-estimativa-da-conab-para-safra-de-graos-2024-25-e-de-322-53-milhoes-de-toneladas. Accessed on: 20 feb. 2025

[2] CONAB. Produção de grãos 2024/2025 é estimada em 322,3 milhões de toneladas com clima favorável para as culturas de 1ª safra. Available at: https://www.conab.gov.br/ultimas-noticias/5895-producao-de-graos-2024-25-e-estimada-em-322-3-milhoes-de-toneladas-com-clima-favoravel-para-as-culturas-de-1-safra. Accessed on: 14 feb. 2025

[3] MINISTÉRIO DA AGRICULTURA E PECUÁRIA. Exportações do agronegócio fecham 2023 com US$ 166,55 bilhões em vendas. Available at: https://www.gov.br/agricultura/pt-br/assuntos/noticias/exportacoes-do-agronegocio-fecham-2023-com-us-166-55-bilhoes-em-vendas. Accessed on: 20 feb. 2025

[4] CONAB. Produção de grãos 2024/2025 é estimada em 322,3 milhões de toneladas com clima favorável para as culturas de 1ª safra. Available at: https://www.conab.gov.br/ultimas-noticias/5895-producao-de-graos-2024-25-e-

The impact of agribusiness in the development of the Brazilian economy is a consequence of the natural vocation of the country. The vast territorial dimension of farmable lands, the tropical climate and the abundance of water resources (Brazil accounts for approximately 12 to 18% of the earth's freshwater) make the country a perfect environment for agribusiness. All these natural resources, associated with their business-oriented application, state of the art technology and a much diversified industry, enhance the productivity and competitiveness of Brazilian agribusiness.

1.2 Products and Production

The main Brazilian agribusiness products are soybean, sugar and alcohol, poultry, cattle, pigs, coffee, fruits and juices, and cotton.

According to the Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística or IBGE), the production of grains in 2023-2024 reached approximately 292.7 million tons[5]. Brazil's cattle herd, which reached 238.6 million on 31 December 2023[6], is the world's second largest, second only to India. Since 2008, Brazil is the world's largest exporter of beef, with a volume of 2.89 million tons and earnings of more than USD 12.8 billion[7]. For more than a decade, the country has also been the world leader in poultry production. In 2024, approximately 5.29 million tons were exported, corresponding to USD 9.928 billion in earnings[8]. Additionally, according to a U.S. Department of Agriculture report, Brazil currently produces 4.45 million tons of pork per year[9].

In recent years, only a few countries have had such an expressive growth in the international commerce of agribusiness commodities. For example, the Brazilian agribusiness exports generated revenues of approximately USD 13 billion in 1990, whereas in 2010, the amount reached almost USD 77 billion and closed at USD 164.4 billion in 2024, corresponding to 49% of the country's total exports.[10] Accordingly to data of the federal government reflected in the Agribusiness Foreign Trade Bulletin of the Brazilian Confederation of Agriculture and Cattle

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estimada-em-322-3-milhoes-de-toneladas-com-clima-favoravel-para-as-culturas-de-1-safra. Accessed on: 14 feb. 2025

[5] IBGE. Levantamento sistemático da produção agrícola estatística da produção agrícola. Available at: https://biblioteca.ibge.gov.br/visualizacao/periodicos/2415/epag_2024_dez.pdf. Accessed on: 20 feb. 2025.

[6] IBGE. Rebanho de bovinos (bois e vacas) no Brasil. Available at: https://www.ibge.gov.br/explica/producao-agropecuaria/bovinos/br. Accessed on: 20 feb. 2025.

[7] APEX BRASIL. Brasil bate recorde nas exportações de carne bovina em 2024. Available at: https://apexbrasil.com.br/br/pt/conteudo/noticias/Brasil-bate-recorde-nas-exportacoes-de-carne-bovina-em-2024.html#:~:text=Em%20ano%20hist%C3%B3rico%20para%20o,de%20carne%20bovina%20pelo%20Brasil. Accessed on: 20 feb. 2025

[8] ABPA Associação Brasileira de Proteína Animal. Consolidação 2024: exportações de carne de frango crescem 3% e alcançam novo recorde. Available at: https://abpa-br.org/noticias/consolidacao-2024-exportacoes-de-carne-de-frango-crescem-3-e-alcancam-novo-recorde/. Accessed on: 20 feb. 2025.

[9] USDA Foreign Agricultural Service. Production – Pork. Available at: https://www.fas.usda.gov/data/production/commodity/0113000. Accessed on: 20 Feb. 2025.

[10] MAPA. Marca histórica do agronegócio brasileiro destaca protagonismo na segurança alimentar global. Available at: https://www.gov.br/secom/pt-br/assuntos/noticias/2025/janeiro/marca-historica-do-agronegocio-brasileiro-destaca-protagonismo-na-seguranca-alimentar-global. Accessed on: 20 feb. 2025.

Breeding (CNA), the agribusiness exports alone generated a trade surplus of nearly USD 150 billion in 2023, positioning Brazil as the third largest global exporter of agricultural products, behind the European Union and the United States. In this regard, the Organization for Economic Cooperation and Development (OECD) and the United Nations Food and Agriculture Organization (FAO), in their Agricultural Outlook 2024-2033 report,[11] emphasize Brazil's prominent position vis-à-vis projections that strengthen the positioning of Latin America as the world's main exporter.

In further regard to the relevance of the Brazilian agribusiness, it is worth emphasizing that its share in the national gross domestic product (GDP) or produto interno bruto (PIB) was nearly 22% in 2024[12]. In terms of exports, approximately 50% of the Brazilian exports are related to products originating from the countryside, Brazil being the largest exporter of soybean, meat, sugar, ethanol, coffee and orange juice.

According to the Ministry of Agriculture, Brazil's immense potential for agribusiness, coupled with its installed capacity and it's already recognized innovation capacity of its researchers, means that there is a vast scope for foreign and private investment in agricultural research and development. Among the areas in which investment opportunities are arising are: cosmetics; health foods; the use of biotechnology for the development of new plant varieties resistant to parasites, pests and diseases; and research in IT for agribusiness management and precision agriculture.

In this regard, innovation has proven to be essential for an ever more thriving agribusiness in terms of productivity and sustainability.

The potential of this sustainable growth is the result of a consistent cutting-edge system, with an increasing capacity to produce more in a smaller area. In the last 50 years the productivity of Brazilian agribusiness has grown 386%, while the increase in the size of the area used corresponded to only 83%.

This effectiveness is directly tied to sustainable practices, reduction of environmental impact and the rational use of natural resources. However, all this strength is only so supported by a process of constant evolution, both in terms of legislation and technological development.

This effort is equally crucial in regard to sustainability. It is estimated that the global population will be around 9.5 billion by 2050[13]. To feed that many people,

[11] OCDE. OECD-FAO Agricultural Outlook 2024-2033. Available at: https://www.oecd.org/en/publications/oecd-fao-agricultural-outlook-2024-2033_4c5d2cfb-en/full-report/component-5.html#chapter-d1e3540-3af72ab86a. Accessed on: 20 feb. 2025.
[12] CEPEA. PIB do Agronegócio. Available at: https://cepea.esalq.usp.br/upload/kceditor/files/CT-PIB-AGRO_23.JAN.25.pdf. Accessed on: 20 feb. 2025
[13] NAÇÕES UNIDAS BRASIL. População mundial deve chegar a 9,7 bilhões de pessoas em 2050, diz relatório da ONU. Available at: População mundial deve chegar a 9,7 bilhões de pessoas em 2050, diz relatório da ONU | As Nações Unidas no Brasil. Accessed on: 14 Fev. 2025

the Food and Agriculture Organization of the United Nations (FAO) estimates that food production will need to increase 70% by 2050, 20% already by 2032.[14]

According to the Agricultural Outlook 2021 – 2030[15] report of the Food and Agriculture Organization of the United Nations (FAO) and the Organization for Economic Cooperation and Development (OECD), 87% of the growth in the global agricultural production by 2030 will originate from productivity gains.

1.3 Development of a Specific Legal System

The importance of agribusiness for the Brazilian economy and culture is reflected in the Brazilian Constitution and legal system.

Based on constitutional provisions, the Brazilian legal system created a legal micro system on the production, industrialization, commercialization and distribution of agricultural products and livestock. The definition and regulation of agribusiness is not provided by the Brazilian legal system in a single specific law, but in a variety of federal, state and municipal laws and regulations, containing several supplementary provisions for the elements that encompass the broad definition of agribusiness. These provisions have also created governmental and civil institutions dedicated to improve and control this very important sector of the Brazilian economy.

1.4 The Brazilian Governmental Structure for Agribusiness

The relevance of agribusiness for the country is also reflected in its governmental structure.

Since 1860, Brazilian governments have been including agribusiness matters in the authority of certain government departments. In 1930 the Ministry of Agriculture was created, whose authority has been adjusted throughout the years. The mission of this Ministry is to achieve the sustainable development of agriculture; enhance the productivity, safety and quality of Brazilian products; and foster domestic and international competitiveness, with a view to reduce inequality and promote social inclusion.

Among the main secretariats, departments and public companies subordinated to the Ministry of Agriculture are the Secretariat for International Agribusiness Relations (Secretaria de Relações Internacionais do Agronegócio or SRI); the Secretariat of Agricultural Policy (Secretaria de Política Agrícola or SPA); the Brazilian Agricultural Research Company (Empresa Brasileira de Pesquisa Agropecuária or EMBRAPA); and the National Food Supply Company (Companhia Nacional de Abastecimento or CONAB).

1.4.1 The Secretariat for International Agribusiness Relations (SRI)

Founded in the beginning of 2005 to address issues related to the increasing participation of Brazil in the international market, the SRI is responsible for promoting the interests of the Brazilian agribusiness sector and securing access to

[14] NAÇÕES UNIDAS BRASIL. Mundo precisará produzir 70% mais alimentos até 2050, calcula ONU. Available at: Mundo precisará produzir 70% mais alimentos até 2050, calcula ONU | As Nações Unidas no Brasil. Accessed on: 14 Fev. 2025
[15] OECD. OECD-FAO Agricultural Outlook 2021-2030. Available at: OECD-FAO Agricultural Outlook 2021-2030 | OECD. Accessed on: 14. Fev. 20

new foreign markets. With a specialized staff that maintains close relations with other areas within the Ministry, the SRI represents Brazil's agribusiness sector interests in international negotiations on sanitary or commercial matters and seeks to promote Brazilian products in both the traditional and new markets.

The implementation of specific laws and policies designed to control and promote animal and plant health is a responsibility of the Animal and Plant Health and Inspection (Secretaria de Defesa Agropecuária or SDA), which oversees the prevention, control and eradication of animal and plant diseases and plagues, and certifies the origin of food products and agricultural inputs.

1.4.2 The Secretariat of Agricultural Policy (SPA)

The restructuring of the Brazilian economy in the 1990s was marked by deep changes in economic policy based on the liberalization of domestic and foreign markets and on the deregulation of the domestic market. This is a guiding process that continues to be followed by the SPA, which is responsible for the rules of production and financing, and for the public support on the commercialization of agricultural products. The definition of a national policy for agribusiness is essential for the sector as it allows farmers to plan over year-long periods, with confidence that they will not be surprised by sudden changes in the institutional or market conditions.

Based on diagnostic studies that take into account the effects of possible macro-economic changes and domestic and international markets trends, the SPA establishes guidelines for agricultural credit, sales, food supply, crop insurance and zoning.

1.4.3 The Brazilian Agricultural Research Company (EMBRAPA)

Much of the credit for the outstanding performance of Brazil's agriculture sector and the prosperity of the nation's farms over the past three decades can be attributed to efforts of the Brazilian Agricultural Research Company (Empresa Brasileira de Pesquisa Agropecuária or EMBRAPA). Acknowledged worldwide for the excellence of its research and contributions to sustainable development, EMBRAPA has made inestimable contributions to the competitiveness of Brazil's agribusiness sector, the government's social inclusion and food safety policies, as well as environmental preservation.

This contribution is enabled by EMBRAPA's network of 43 research centers, which provide support for farmers throughout the country. These research centers, in partnership with colleges and governmental entities, are engaged in scientific and technological research and exchange of information with other national and international counterpart institutions.

1.4.4 The National Food Supply Company (CONAB)

The National Food Supply Company (CONAB) coordinates issues of food safety and supply throughout the entire production process – from the decision to plant up to the commercialization of harvests, in the countryside and in cities. CONAB's activities include market surveys and harvest of the crops estimates, the monitoring of production and price developments, and studies to support the definition of agricultural policy. CONAB is responsible for logistical management of the harvests and coordination of the transportation to the market. It manages government stockpiles and conducts sales of commodities consistent with market

trends. The company aims at assuring fair prices for farmers on one hand, and stable prices of basic staples on the other hand, thereby assuring lower prices to the consumer. The stockpile management policy implies in the coordination of various credit mechanisms (working capital for farmers, credit for production, sales and investment, etc.), including a Guaranteed Minimum Price Policy, in which CONAB carries out selective regional interventions to absorb production surpluses and correct price distortions.

1.4.5 The National Institute of Colonization and Agrarian Reform (INCRA)

The National Institute of Colonization and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária or INCRA) is the federal government agency in charge of land reform settlements and the registration and census of rural lands. Upon the registration of rural lands, INCRA issues the Rural Land Registration Certificate, which is required to dismember, transfer, lease and mortgage rural land.

1.5 Trade Unions

Regarding the trade unions related to agribusiness, the main institution is the Brazilian Confederation of Agriculture and Livestock (Confederação da Agricultura e Pecuária do Brasil or CNA). The CNA System integrates the 27 federations of agriculture and livestock, which operate in the states and the federal district, and more than two thousand rural trade unions of agricultural companies and entrepreneurs.

Constitutional provisions

2 Constitutional provisions

The importance of agribusiness to the Brazilian economy and culture is reflected in the Brazilian Constitution, which contains the fundamental rules on which the Brazilian legal system is based. Constitutional rules are hierarchically higher than others, meaning that the constitutional rules and principles guide the other hierarchically lower rules and prevail in case of conflict.

2.1 Special Protection of Rural Lands and National Agricultural Policy

The Brazilian Constitution has an entire chapter dedicated to agricultural policy and reform. Among these constitutional rules, which are the basis of a complex legal system, is the relevance attributed to rural and productive lands as well as the need for a national agribusiness policy in Brazil. Consistent with this, Article 185 of the Brazilian Constitution establishes that the productive lands shall receive special treatment and cannot be expropriated for agricultural reform purposes. This special treatment and protection of the sector is also established in other provisions of the Brazilian Constitution, such as Article 5, XXVI, which establishes that small rural lands cannot be seized for collection of debt originating from production activities.

Article 187 of the Brazilian Constitution establishes that the agricultural policy shall be planned and carried out with the participation of rural workers and companies, taking into consideration tax and credit instruments, prices compatible with production costs, guarantees for the sale of rural products, agricultural insurance and cooperative organizations.

The execution of the agricultural policy at the national level is controlled by the Ministry of Agriculture with the assistance and advice of the National Council of Agricultural Policy, originally established by Law no. 8.171/1991, which states that the policy shall be grounded on the production, industrialization, commercialization and transportation related to the agricultural activity.

The Ministry of Agrarian Development and Family Agriculture is responsible for policies related to agrarian reform and sustainable rural development regarding family farming, *quilombolas* and other traditional peoples and communities.

2.2 The General Principles of the Economic Activities

The Brazilian economic system, including agribusiness must comply with the general principles of the economic activity established in Article 170 of the Brazilian Constitution, which include the protection of national sovereignty, private property and its social purposes, fair competition, consumer and environmental protection, as well as the reduction of regional and social inequalities.

Restrictions to those principles may only be imposed by the Brazilian Constitution, even if implemented by ordinary legislation. This is the case of Article 190, which establishes that ordinary law will regulate and limit the conditions for the acquisition and leasing of rural lands by foreigners.

The Brazilian federal government's interventions in agribusiness primarily envisage (i) cancellation of the harmful effects of seasonality, climate change and price variations, and (ii) stimulate progress in technology, as well as productivity.

The usual intervention tools are the establishment of minimum prices and governmental stockpiles, changes in taxes and customs, low-interest credit lines for planting at low interest rates (such as the Harvest Plan or Plano Safra), commercialization and investments, and agricultural insurance.

2.3 Fiscal Benefits as a Constitutional Policy and Federal Authority for the Taxation of Rural Lands

According to Article 153 of the Brazilian Constitution, the Tax on Rural Property shall be regulated by the Federal Government but charged by the municipalities if they so elect. This taxation shall be progressive and the tax rates established in a way that discourages maintaining unproductive property.

In a programmatic rule, Article 187 of the Brazilian Constitution establishes that the agricultural policy shall be planned and carried out utilizing fiscal measures, among others. This means that the Federal Government, the States, and the Municipalities may establish a special tax treatment to agricultural activities, to support the agricultural policy.

2.4 Environmental Protection

Consistent with the concept of sustainable development, Article 225 of the Brazilian Constitution establishes environmental protection, which shall be enforced by the federal, state and municipal governments, as a common competence. Such common competence is not only regulatory, as established in Article 24, VI and VII of the Brazilian Constitution, but also executive. Moreover, Article 225 of the Brazilian Constitution establishes that not only the government but all citizens have the duty to defend and preserve the environment.

The protection of the environment is closely connected to agribusiness, a sector that is intimately involved with the use of natural resources, which is the reason why the legal competences attributed by the Brazilian Constitution and the respective provisions are critical for the implementation and execution of any agribusiness-related project.

Article 225 of the Brazilian Constitution similarly establishes that, in order to ensure the effectiveness of the environmental protection, the government has the authority to define protected areas where no company or restricted activities may be performed.[16] Additionally, any potential polluting activity must be previously licensed, and an environmental impact assessment[17] must be requested before the installation of any potential polluting activity is authorized. Furthermore, the zoning of certain activities and the establishment of the so-called Legal Reservation[18] and Permanent Preservation Areas[19] are important tools for the environmental protection, as determined by the Brazilian Constitution.

[16] Regulated by Law no. 9,985/2000.
[17] EIA/RIMA
[18] As defined in chapter 5.4.
[19] As defined in chapter 5.4.

International Commerce

3 International Commerce

As is well known, Brazil is a major global player in agricultural products and is among the world leaders in various agricultural products. According to the latest OECD agricultural policy monitoring report, Brazil is the third largest exporter of agricultural food products, behind only the European Union and the USA. Two-thirds of the Brazilian exports of agricultural products consist of grains and one-third consists of agricultural products. The main agricultural product exported by Brazil is soybean, which accounts for approximately one-half of the volume of such exports.[20]

According to the Brazil Agribusiness Projections 2022/2023 to 2032/2033 report[21] of the Ministry of Agriculture, Livestock and Supply (MAPA), Brazil's agribusiness GDP (Cepea/USP 2023) achieved consecutive records from 2020 to 2022. Agribusiness contributed, respectively, with 26.6% and 24.8% of Brazil's GDP in 2021 and 2022. On the other hand, Brazil accounts for only 0.64% of the global imports of agricultural products, ranking 38th among the importer countries[22], which demonstrates the importance of the Brazilian agribusiness also for supplying the domestic market. Nevertheless, some agricultural products are relevant in Brazil's importations, particularly wheat, malt, forestry products such as paper and rubber, fish and beverages.[23]

Data provided by the Brazilian Institute of Geography and Statistics (IBGE) in the "Outlook of the Agribusiness in Brazil Letter" for the first half of 2024[24] indicates that:

> *Brazilian agribusiness closed the first half of the year with an accumulated surplus of USD 71.96 billion – a 2.7% decrease compared to the same period of last year. The sector's exports totaled USD 81.40 billion, while imports amounted USD 9.44 billion – a number 1% below and 14.4% above, respectively, of the numbers in 2023. Considering products of all sectors, the trade balance in the first half of the year was also in a surplus of USD 42.31 billion – that is, USD 2.31 billion less than the amount recorded in the same period of the previous year. In terms of share, agribusiness imports accounted for 7.5% of Brazil's total imports in the first half of 2024, an increase of 0.69% compared to the same period of last year. Similarly, the*

[20] OECD. Agricultural Policy Monitoring and Evaluation 2022: Reforming Agricultural Policies for Climate Change Mitigation. Available at: https://www.oecd-ilibrary.org/sites/7f4542bf-en/1/3/3/4/index.html?itemId=/content/publication/7f4542bf-en&_csp_=47105d800c61fa618752b9ec6431b53a&itemIGO=oecd&itemContentType=book. Accessed on: 4 July 2023.
[21] MAPA. PROJEÇÕES DO AGRONEGÓCIO Brasil 2022/23 a 2032/33 Projeções de Longo Prazo . Available at: https://www.gov.br/agricultura/pt-br/assuntos/politica-agricola/todas-publicacoes-de-politica-agricola/projecoes-do-agronegocio/projecoes-do-agronegocio-2022-2023-a-2032-2033.pdf/. Accessed on: 16 August 2023.
[22] ITC Trade Map - Trade statistics for international business development. Available at: https://www.trademap.org/. Accessed on: 5 july 2023.
[23] AGROSTAT. Ministério da Agricultura, Pecuária e Abastecimento. Available at: https://indicadores.agricultura.gov.br/agrostat/index.htm. Accessed on: 5 July 2023.
[24] IBGE. Carta de Conjuntura. AGROPECUÁRIA Comércio exterior do agronegócio: primeiro semestre de 2024. Available at: https://www.ipea.gov.br/cartadeconjuntura/wp-content/uploads/2024/08/240801_cc_64_nota_3.pdf. Accessed on: 25 February 2025. Tables and graphics suppressed.

sector's share in total exports between January and June of this year slightly decreased by 1.19% compared to the same period of last year.

As the foregoing recent IBGE data shows, agribusiness continues to be very important to the Brazilian economy, especially in terms of the share of Brazilian exports in the Brazilian trade balance. The share of agribusiness exports in the trade balance for the cumulative period from January 2024 to June 2024 was 48.56%. Brazilian agribusiness imports, on the other hand, continue to be less relevant. The volume of imports on the first half of 2024 slightly increased by 0.69% compared to the same period of the previous year. The share of agricultural imports in the trade balance in the first half of 2024 was 7.53%.

According to the aforesaid report, specifically in the first half of 2024, imports of dairy products, wheat, rice, soybeans, fish and horticultural products, vegetables, roots, and potatoes stood out.

Considering Brazil's substantial insertion in the global trade of agricultural products, it is extremely important for companies engaged in the sector to be attentive to the regulations that govern international trade relations and the legal instruments that can have a positive or negative impact on their operations.

There are relevant discussions concerning the trade measures that affect both the operations of Brazilian exporters of agricultural products and the importers of these products in Brazil.

In regard to the Brazilian **importers** of agricultural products the following themes are relevant: (i) trade protection measures adopted by Brazil against imports in the agricultural sector; (ii) tariff changes related to products of the agricultural sector; (iii) sanitary and phytosanitary barriers; and (iv) regulatory and tax issues related to international trade.

On the other hand, in regard to the Brazilian **exporters** of agricultural products, the following themes are relevant: (v) market access; (vi) sanitary and phytosanitary barriers and their impact on Brazilian exports; (vii) trade protection measures imposed against products exported by Brazil; and (viii) WTO disputes involving Brazilian exports; (ix) quotas for exports of Brazilian products to the European Union; and (x) environmental barriers to Brazilian exports and the impact thereof on the agricultural sector in Brazil.

Before further addressing these themes, however, a brief overview of the World Trade Organization (WTO) and themes related to the agricultural sector under the WTO is set out; along with a brief overview of Mercosur and discussions related to the sector. An understanding - although superficial –of the operation of these organizations is essential for the other international trade discussions concerning the agricultural sector that are addressed throughout this chapter.

3.1 World Trade Organization (WTO): brief overview and trade defense measures related to the agricultural sector

Since 1995 the World Trade Organization (WTO) plays an important role in regulating international trade at a multilateral level.

The WTO's goal is to promote the development of the member countries through free trade, based on the premise that the removal of unnecessary trade barriers

fosters economic growth and employment levels, enabling a greater integration of developing countries into the multilateral system.

In order to ensure that trade is fair, the WTO member countries have been authorized, through international agreements (the Anti-Dumping Agreements, on Subsidies and Safeguards), to adopt trade protection measures against unfair international trade practices (anti-dumping rights, in the case of dumping; compensatory measures, in the case of subsidies; and safeguards, in the case of import surges), provided that certain minimum requirements established in the respective agreements are met.

In Brazil, the authority responsible for investigating and checking the occurrence of unfair trade practices is the Department of Commercial Defense (DECOM), one of the departments that comprise the Secretariat of Foreign Trade (SECEX). The trade protection measures are applied by the Executive Management Committee (GECEX) of the Foreign Trade Chamber (CAMEX).

However, if the appeal to the trade protection measures is considered inappropriate, the countries that applied them can be challenged by the WTO Dispute Resolution Court, which has the authority to rule disputes between member countries and to apply sanctions against the country that acted in non-conformity with the rules established in the international agreements.[25]

Nevertheless, since the end of 2019 the WTO Dispute Resolution Court has been under a severe crisis due to the current freezing of its Appeals Court, where disputes are definitively ruled. The Appeals Court has become inactive mainly due to the United States' rejection of the appointment of new members to comprise the Appeals Court, and there is no estimate for overcoming this deadlock situation.

Given this, in March 2020 a group of 47 member countries of the WTO (including Brazil), announced the creation of the Multi-Party Interim Appeal Arrangement (MPIA), conceived by the European Union as a provisory alternative to the WTO appeals system. Today, the MPIA has 53 members.[26] It is a temporary arbitration court to which the MPIA members can appeal to settle disputes based on the WTO rules.

At a national level, Law No. 14.353/2022 was enacted, authorizing Brazil to adopt unilateral retaliation measures against other WTO member countries that appealed lower court decisions of the Dispute Resolution Court that are favorable

[25] The resolution of disputes before the WTO consists of four main phases: (i) consultations: the plaintiff asks the defendant to provide information on the trade practices being challenged and their legal grounds, and requests modifications to these practices to bring them into line with the rules laid down in the WTO agreements; (ii) establishment of a panel: an adjudicatory body made up of three members chosen by mutual agreement between the parties. In the end, the panel issues a report on the compatibility of the challenged measures in relation to the WTO agreements; (iii) appeal: in the event of non-acceptance with the panel's decision, members countries can appeal to the Appellate Body, made up of seven permanent members, with a four-year mandate (renewable once). Of these seven members, three are assigned to issue a report on each dispute; and (iv) implementation: if the panel or the Appellate Body concludes that the measure is incompatible with WTO rules, the defendant must modify it to bring it into conformity, failing which the plaintiff will be authorized to adopt retaliatory measures. Available at: https://www.gov.br/mre/pt-br/assuntos/politica-externa-comercial-e-economica/comercio-internacional/o-sistema-de-solucao-de-controversias-da-omc. Accessed on: 25 August 2023.

[26] Available at: https://wtoplurilaterals.info/plural_initiative/the-mpia/. Accessed on: 25 August 2023.

or partially favorable to Brazil, but whose appeals cannot be ruled by the Appeals Court. There are no records, however, of Brazil having exercised this option so far.

According to the WTO website, since the creation of the WTO to this date, Brazil has been involved in 51 dispute cases, 34 as complainant and 17 as respondent. Additionally, Brazil has participated in 167 disputes as an interested third party.

As an example, the table below sets out recent disputes involving agribusiness measures in which Brazil figures as complainant or respondent:[27]

Reference	Complainant	Respondent	Subject Matter	Filing Date
DS607	Brazil	European Union	Measures concerning certain poultry meat preparations imported from Brazil	08 November 2021
DS579*	Brazil	India	Measures concerning sugar and sugar cane	27 February 2019
DS568	Brazil	China	Measures concerning sugar importation	16 October 2018
DS507	Brazil	Thailand	Measures concerning sugar	04 April 2016
DS506	Brazil	Indonesia	Measures concerning the importation of beef	04 April 2016
DS484*	Brazil	Indonesia	Measures concerning the importation of chicken and chicken by-products	16 October 2014

[27] Available at: https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm?year=none&subject=none&agreement=none&member1=BRA&member2=none&complainant1=true&complainant2=true&respondent1=true&respondent2=true&thirdparty1=true&thirdparty2=false#results . Accessed on: 25 August 2023.

Reference	Complainant	Respondent	Subject Matter	Filing Date
DS439	Brazil	South Africa	Anti-dumping duties on frozen chicken meat from Brazil	21 June 2012

* Cases that could five rise to the adoption of unilateral retaliatory measures by Brazil, based on Law No. 14.353/2022, given that they were decided in the first instance in favor of Brazil, but there is a lack of a final decision due to the suspension of the Appellate Body.

Brazil is also very active in disputes before the WTO as an interested third party, participating in disputes that may have some impact on the country, to support the arguments of the party (complainant or respondent that align with the national interests). The following table sets out Brazil's recent record in this position, in disputes involving agribusiness:

Reference	Complainant	Respondent	Subject Matter	Filing Date
DS602	Australia	China	Anti-dumping duties on wines from Australia	04 March 2022
DS600	Malaysia	European Union, France and Lithuania	Measures on palm oil and palm oil for biofuels	29 July 2021
DS598	Australia	China	Anti-dumping duties and compensatory measures on barley from Australia	03 September 2021
DS593	Indonesia	European Union	Measures on palm oil and palm oil for biofuels	12 November 2020
DS591	European Union	Colombia	Anti-dumping duties against frozen French fries from Belgium, Germany and the Netherlands	15 November 2019
DS589	Canada	China	Measures concerning canola seeds	09 September 2019

3.2 Mercosur, tariffs and tariff changes related to Brazilian imports of agricultural products

Created in 1991 under the Treaty of Asunción (Tratado de Assunção), the Southern America Common Market (Mercado Comum do Sul or Mercosur) purports to promote regional integration among the member states to establish a common market. Mercosur's founding member countries are Argentina, Brazil, Paraguay and Uruguay. In 2012, Venezuela also joined the block, but was suspended in 2017. Bolivia is in the process of adhering.

As an integral part of the Treaty of Asunción, Argentina, Brazil, Paraguay and Uruguay entered the Economic Complementation Agreement No. 18 (ACE 18), which established a free trade program for the 1991 to 1994 period. Currently, under the ACE 18, the intra-zone trade is entirely tariff free, except for products of the automotive and sugar industries, as well as goods originating from free trade zones and special customs areas, which are subject to specific systems.

The Mercosur member countries have a population of approximately 261 million, and the combined nominal gross domestic product (GDP or PIB) of the full-member nations totaled nearly USD 2.8 trillion in 2023, making Mercosur the fifth largest economy in the world[28].

Under an extra-regional perspective, the Mercosur-European Union Association Agreement is the broadest and most complex ever negotiated by Mercosur, intended to create one of the largest free trade areas in the world. Negotiations on this bi-regional association agreement began more than 20 years ago and on 28 June 2019 the Mercosur ministers and European Union commissioners informed that they reached a political agreement on the trade pillar of the agreement, and that the texts of the agreement had been submitted for legal review, a stage that precedes the formal signing. Basically, the agreement, under the terms negotiated so far, establishes a reduction to zero, over a maximum period of 15 years, of the import duties applied over 91% of commercial trade between the two economic blocks.

Although the agreement was concluded in 2019, it was not ratified. In 2020 European governments expressed concerns about the agreement, criticizing environmental policies adopted by the Brazilian government back then.[29] In more detail, some EU member states such as Austria, France, and Spain criticized the Brazilian environmental policy conducted during the government of former President Jair Bolsonaro and expressed concerns about the possibility of the agreement intensifying deforestation in Brazil.[30]

This matter was discussed again in a visit to Brazil by a European Union delegation in May 2023. On that occasion European Parliament members affirmed the need

[28] Available at: https://valor.globo.com/brasil/noticia/2023/07/04/o-que-e-o-mercosul-e-quais-paises-fazem-parte-dele-entenda.ghtml. Accessed on: 25 August 2023.
[29] FINANCIAL TIMES. EU trade deal with South America delayed by row over environmental rules. Available at: https://www.ft.com/content/94d2410b-c3c1-4e0b-ad50-6144b310c75f. Accessed on: 25 August 2023.
[30] CLIMAINFO. Mercosul e União Europeia negociam compromisso ambiental em acordo comercial. Available at: https://climainfo.org.br/2023/03/06/mercosul-e-uniao-europeia-negociam-compromisso-ambiental-em-acordo-comercial/. Accessed on: 23 August 2023.

for greater environmental sustainability guarantees to unlock the EU's trade agreement with Mercosur.[31]

According to CNA, with the enacting of the trade agreement between Mercosur and the European Union, 39% of the tariff classes that apply to agricultural products shall have a zero tax rate in the European block already in the first year. This 39% corresponds to 1,004 of the 2,547 tariff classes that classify agricultural and fishery products in the EU list of concessions.

The Brazilian agribusiness sector is one of the most impacted by the agreement. The government estimates presented to the Federal Senate in June 2022 indicate that the enactment of the agreement will bring significant gains to Brazilian agribusiness. For example, it was mentioned back then that sugar exports, currently limited to a quota of 22,000 tons per annum are expected to increase to more than 180,000 tons. A significant increase in ethanol and chicken exports was also estimated.[32]

There are, however, several other free trade agreements entered between Mercosur and other commercial partners. The first free trade agreement signed by Mercosur was with Israel on 18 December 2007. Since then, free trade agreements were signed with Palestine, Egypt and Singapore. Currently, there are free trade agreements being discussed (although it is not clear yet if/when same shall be signed) with the European Union and Canada. Furthermore, preferential commerce agreements were signed with India, Egypt and the Southern African Customs Union or SACU (South Africa, Botswana, Lesotho, Namibia and Swaziland), as a first step for establishing a free trade area. Additionally, in 2019, the negotiation phase of the trade agreement with the European Free Trade Association (EFTA) was completed and it still is the phase of adoption, pending ratification by the member countries' parliaments.

Negotiations of commercial agreements are in course with Lebanon, South Korea, Vietnam and Indonesia.

The trade agreements signed by Mercosur are relevant to the agricultural sector due to tariff reductions and, especially, commitments made in terms of technical, sanitary, and phytosanitary barriers. These commitments are extremely relevant for opening up markets and effective exports of Brazilian products, as detailed later in this chapter.

Changes in the Mercosur Common External Tariff are relevant for Brazilian importers and exporters, through which it is possible to request the reduction or increase of import tax rates on Brazilian imports. These mechanisms are widely used by the sector, as addressed below in this chapter.

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[31] UOL. Parlamentares europeus pedem maior compromisso ambiental para desbloquear acordo com Mercosul. Available at: https://noticias.uol.com.br/ultimas-noticias/afp/2023/05/18/parlamentares-europeus-pedem-maior-compromisso-ambiental-para-desbloquear-acordo-com-mercosul.htm. Accessed on: 23 August 2023.
[32] AGÊNCIA SENADO. Acordo Mercosul-UE deve baratear produtos, mas forçar eficiência e produtividade. Available at: https://www12.senado.leg.br/noticias/infomaterias/2019/08/acordo-mercosul-ue-deve-baratear-produtos-mas-forcar-eficiencia-e-produtividade. Accessed on: 25 August 2023.

3.3 Brazilian Imports of Agricultural Products

3.3.1 Commercial protection measures imposed by Brazil against imports by the agricultural sector and/or by-products

As a member of the WTO, Brazil can legitimately impose trade protection measures (anti-dumping, subsidies and safeguards) against Brazilian imports of products that are proved to harm its domestic producers, provided that the requirements of the WTO Anti-dumping, Subsidies, and Safeguards Agreements are met. In these cases, if the trade protection measure is applied, a surcharge (anti-dumping, compensatory or safeguard measure) shall be charged when the product subject to the measure is imported into Brazil from the origins covered by the trade protection measure.

Although Brazil is a frequent user of the trade protection measures, the applying of measures in relation to the agricultural sector is not as frequent compared to the manufacturing industry, either because of the nature of the measures or the greater difficulty to obtain data on the sector in the format required to file a trade protection claim.

In this regard, among the 82 trade protection measures currently adopted in Brazil, only two refer to agricultural products.[33]

- Garlic: definitive anti-dumping duty applied on 3 October 2019, for a period of up to five years, against Brazilian imports of garlic, commonly classified under NCMs 0703.20.10 and 0703.20.90, originating from China (Ordinance SECINT No. 4,593/2019)
- Frozen potatoes: definitive anti-dumping duty extended on 17 February 2023, for a period of up to five years, against Brazilian imports of frozen potatoes, commonly classified under NCM 2004.10.00, from Germany, Belgium, France and Netherlands (Resolution GECEX No. 451/2023)

It is worth mentioning, furthermore, other segments of the agricultural sector that have historically benefited from these measures:

- Grated coconut: domestic producers enjoyed a safeguard measure from 2002 to 2012 and a compensatory measure against imports from the Ivory Coast and the Philippines that was imposed in 1995. This product was later included in the list of exceptions to the TEC (LETEC), at a rate of 55%.[34]
- Milk: Brazilian imports of powdered milk from the European Union and New Zealand were subject to an anti-dumping measure in 2001, which was successively renewed until 2019, when the measure ceased without renewal of the surcharge.

3.3.2 Tariff adjustments related to the agricultural sector

As previously mentioned, Brazil is a part of a customs union system with the Mercosur countries, in which the Common External Tariff (TEC) is established for extra-block transactions. However, according to the Treaty of Asunción and

[33] As at 9 April 2023.
[34] Available at: Serviços de Defesa Comercial (sindcoco.com.br). Accessed on: 22 August 2023.

ultimately reissued in the Common Market Council (CMC) Decision No. 11/2021[35], the member countries are allowed to use the mechanism of tariff changes through their respective National Lists of Exceptions to the Common External Tariff. This decision is intended to preserve the competitiveness of the block, taking into account the particularities of each member country's economy.

In Brazil, the Executive Management Committee (GECEX)[36] of the Chamber of Foreign Trade (Camex) is responsible, among other attributions, for establishing import tax rates, subject to the conditions and limits established in the law. Likewise, the Committee may change the form established in the organization's decisions.

In order to operate the customs union through the TEC, the member countries of the block use the Mercosur Common Nomenclature (NCM)[37], which is the goods nomenclature used by Mercosur members in all their trade operations. The NCM - similarly to all commodity nomenclatures - was drawn up based on the "Harmonized Commodity Description and Coding System" adopted by the World Customs Organization (WCO), which was created to improve and ease international trade and its statistical control.

In this regard, tariff adjustments claims may be either of a permanent or temporary feature, and are implemented through specific instruments[38].

(i) **Permanent adjustments to the TEC/NCM**: of a permanent feature, the appropriate instrument is the Adjustment of the NCM (Common Nomenclature of Mercosur) and of the TEC.

- **Adjustments to the NCM description**: these consist in adjustments to the descriptions of the goods, the creation or elimination of new items for the NCM to better describe or subdivide existing sub-items of the TEC.
- **Adjustments to the TEC**: adjustments to the rate applicable to a certain product/item of the NCM. As a general rule, the TEC shall have a minimum rate of 2% and a maximum rate of 20%.

These claims must be submitted to Mercosur and reviewed by the other member States. In average, such claims are reviewed in approximately three years[39].

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[35] Available at: https://pesquisa.in.gov.br/imprensa/servlet/INPDFViewer?jornal=515&pagina=212&data=22/12/2021&cAcesaptchafield=first. Accessed on: 22 August 2023

[36] GECEX is the executive collegiate body of Camex chaired by the Minister of State of Development, Industry, Commerce and Services and composed of interministerial representatives. Available at: https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/colegiados/gecex. Accessed on: 28 August 2023

[37] Decreet No. 11,428 of 2 March 2023. Available at: https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/decreto/D11428.htm#:~:text=DECRETO%20N%C2%BA%2011.428%2C%20DE%202,outubro%20de%201977%2C%20no%20art. Accessed on: 28 August 2023

[38] Available at: https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex. Accessed on: 28 August 2023

[39] Calculations based on the history of requests made available by CAMEX. Available at: https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/estrategia-comercial/pleitos-em-analise. Accessed on: 22 August 2023

(ii) **Temporary adjustments to the TEC**: Regarding the mechanisms for temporary adjustments, there are claims available to agribusiness for inclusion of products in the LETEC (to increase or decrease rates) and claims for tariff reductions due to supply shortages.

- **LETEC** (List of Exceptions to the Common External Tariff): The federal government can be requested to apply different rates of the TEC for a list of up to 100 NCM codes, either to increase or decrease rates. Brazil is authorized under the Mercosur to change up to 20 codes every six months. In average the LETEC claims are reviewed in approximately 5 months;[40]

- **Temporary rate decrease mechanism due to supply shortages**: this instrument is intended to correct an imbalance between offer and demand for a specific product in order to mitigate the impact on the chain of production and supply to the end consumer. The following are considered imbalances in the offer and demand: (a) temporary absence of regional production of the good; (b) existence of regional production of the good, but the producing Member State does not have a sufficient supply to meet the demand; and (c) existence of regional production of a similar good, but which does not have the features required by the production process of the claimant Member State's industry. Thus, the Brazilian government can respond to the claim on the grounds of shortage of supply by reducing the import tax rates to 0% or 2%. In average LETEC claims are reviewed in approximately 5 months.[41]

Tariff adjustment claims are frequently used by the agricultural sector. For the sake of conceiving the dimension thereof, out of the universe of 10,457 items whose rates currently diverge from the TEC in Brazil, approximately 14% (1,347) refer to agricultural products.[42]

In this regard, and solely to exemplify, in a GECEX meeting held in July 2023 several themes related to the agricultural sector were discussed, standing out the measures favoring national milk producers, who previously had trade protection measures that were revoked in 2019. The federal government's initiative is intended to mitigate the delicate situation that milk producers have been facing in Brazil, with an increase in the internal market production costs and a significant increase in the imports of this product. Accordingly, the import tax rate on three dairy products (butyric oil, mold-ripened cheeses, and cheese with certain moisture content) was increased, and a previous decision that decreased the

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[40] Calculations based on the history of requests listed in the spreadsheet. Available at: https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/estrategia-comercial/pleitos-em-analise. Accessed on: 22 August 2023

[41] Calculations based on the history of requests listed in the spreadsheet. Available at: https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/estrategia-comercial/pleitos-em-analise. Accessed on: 22 August 2023

[42] Products from Chapter 1 to 24 of the Common Nomenclature of Mercosur (CNM) in Annex II – Brazilian tariffs that differ from those established in the TEC, as well as the tariff reductions initially implemented by GECEX Resolution No. 269, of 5 November 2021. Available at: https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/estrategia-comercial/listas-vigentes. Accessed on: 22 August 2023.

import tax on other 29 dairy products such as yogurt, butter, grated cheese, and dulce de leche was revoked.

On the same occasion, Camex analyzed other claims for tariff adjustment related to the sector, such as the submission to Mercosur of a claim to decrease the current tariff on aluminum phosphate based insecticides.

Finally, it should be emphasized that GECEX has recently denied some sectorial claims for tariff adjustment due to supply shortages, involving the following products: corn grain, roasted and ground coffee, and soybean oil meal and pellets and claims concerning fructose, carob gum, lactose, almond paste, industrial milk compound, milk protein, hops, whey powder, and granulated almonds and hazelnuts are being reviewed.

3.3.3 Regulatory and tax issues related to imports

3.3.3.1 Import License

Imports into Brazil are subject to government control from at least three levels of authority: the Secretariat of Foreign Trade (SECEX), which supervises registration and licensing; the Central Bank of Brazil (BACEN), which approves payments for financed imports; and the Brazilian Federal Revenue (RFB), which supervises the tax and customs aspects.

The Ministry of Agriculture is responsible for regulating agricultural products in general, such as raw agricultural products, animal products, pesticides, beverages, among others.

To export animal products to Brazil a prior recognition of the equivalence in the sanitary inspection services of the exporting country is required. Animal products must be accompanied by an International Health Certificate (Certificado Sanitário Internacional or CSI), signed by an official veterinarian. The CSI assures the identification of the goods and their conformity with the technical and legal sanitary requirements.

The import control is carried out through an electronic system named SISCOMEX, which includes a network connecting the RFB, BACEN and SECEX. The first step for the aspiring importer in the importation process is the registration with SISCOMEX.

There are three types of imports:

1. Those not subject to any type of licensing
2. Those automatically licensed
3. Those not automatically licensed

To confirm the licensing requirement applicable to a specific product, the Brazilian importer must consult SISCOMEX, which will inform, based on the tariff classification of the product, whether the product is subject to licensing.

All import documents must be registered in SISCOMEX. In order to obtain access to SISCOMEX, the Brazilian importer must obtain a license to carry out import and export operations, requested before the RFB.

Currently, there are three types of RADAR that vary based on the volume of foreign trade operations:

(i) Express mode: applies to legal entities organized as publicly listed corporations or public companies/joint capital companies;

(ii) Limited mode: applies to legal entities whose estimated financial capacity to carry out import transactions every 6 months ranges between USD 50,000 and USD 150,000.

(iii) Unlimited mode: applies to legal entities whose estimated financial capacity to carry out import operations every 6 months exceeds USD 150,000.

In regard to legal entities already established and operating, the financial capacity is assessed based on the amount of federal taxes collected over the last 5 years (IRPJ/CSLL, PIS/COFINS and Social Security Contribution). The estimated financial capacity results from dividing the amount of taxes by the average dollar exchange rate in the period. If RADAR is granted in the limited mode, a request for revision of the estimative may be filed in order to obtain the RADAR in the unlimited mode.

The legal entities that will figure as purchasers or orderers in indirect import transactions (i.e. import at order or import on account of third parties) must also hold the RADAR.

3.3.3.2 Customs Valuation

If the customs value declared by the Brazilian importer is too low, the government is deprived of collecting the taxes due in the import operation; if the customs value is too high, the result may be an excessive remittance of foreign currency, which could characterize a violation of the exchange control rules. For these reasons the RFB monitors the customs value of the imported products.

Brazilian customs authorities accept the WTO valuation methods because Brazil is a member of the organization and has adopted the WTO rules through Decree No. 1,355 of 30 December 1994. In fact, Decree No. 1,355/1994 reproduces Article VII of the General Agreement on Tariffs and Trade ("GATT 1994") and the Agreement on the Implementation of Article VII of GATT 1994 (Customs Valuation Agreement). In addition to the WTO rules, the Customs Regulation (Decree No. 6,759/2009) and Regulatory IN No. 2,090/2022 regulate the customs valuation at the domestic level.

Therefore, under a formal viewpoint Brazil follows the international rules established in the Customs Valuation Agreement. Under a practical perspective, however, the customs value control of products imported into Brazil occurs based on SISCOMEX parameters. These parameters correspond to minimum and maximum ranges of prices acceptable for each tariff classification. It should be emphasized that these ranges are confidential information and, therefore, it is not possible to access such information.

If the price of importation of a specific product falls outside the SISCOMEX parameters, the RFB may request the importer to submit documents to support the correctness of the value declared by the Brazilian importer (e.g., distribution agreement, export documents, official price list, purchase order, exchange contracts, description of the negotiation process and calculation of price). The Brazilian importer may demonstrate differences in commercial levels, quantity and other relevant elements and costs incurred by the exporter in sales to the corresponding unrelated parties.

If the customs value is challenged, the importer will be subject to collecting the difference in the taxes, plus an ex-officio fine and interest, as well as a fine of 100% of the difference between the price charged and the arbitrated price, in cases of underbilling or overbilling.

3.3.3.3 Forms of Payment and Exchange in Import Operations

Pursuant to the Central Bank of Brazil regulations concerning the exchange market, imports into Brazil may be paid through:

- international payment order, in reais or in foreign currency, through a financial institution authorized by the Central Bank of Brazil to operate in the exchange market;
- international credit card;
- international postal order (up to an amount equal to USD 50,000 and subject to the Post Office's specific conditions);
- crediting in Reais to an account held by the foreign exporter in Brazil
- funds already held abroad by the importer;
- in cash (subject to specific regulations regarding the foreign remittance of cash from Brazil); or
- an international payment or transfer service (eFX).

In regard to imports with exchange coverage, once the products are effectively imported the Brazilian importer will be allowed to exchange local currency for the currency agreed upon with the exporter and pay the import price through regular bank channels.

As a general rule, the payment of imports may be advanced up to 360 days in relation to the date established for: (i) shipment, in the case of goods imported directly from abroad on a definitive basis, including under the drawback system, or when destined to the Manaus Tax Free Zone, Free Trade Area or Industrial Warehouse; or (ii) the nationalization of goods that have been imported under other special or atypical customs systems. Exceptionally, the payment of the importation can be advanced by up to 1,800 days in relation to the dates indicated in paragraphs (i) and (ii), in the cases of: (iii) machinery and equipment with a long production cycle or manufactured at order, provided that it is compatible with the production or commercialization cycle of the good; or (iv) proof that it is impossible to ship or nationalize the good due to factors beyond the importer's will.

In both the cases of resources ingressed into Brazil as well as when such resources are held abroad, the financed imports of goods or services having a term of payment of more than 180 days operations are subject to reporting to the Central Bank of Brazil when the amount involved in the operation is equal to or greater than USD 500,000 (or the equivalent thereof in other currencies).

3.3.3.4 Taxation of imports

The taxes due on imports of agricultural products (not industrialized) include the import tax (II), applied over the customs value, plus freight and insurance; state VAT (ICMS), applied over the customs value, plus freight and insurance (ICMS rates may vary according to the importer's state, but as a rule the rate is 18%);

PIS/COFINS-Import, applied over the customs value at a combined rate of 11.75%, which may vary according to the imported product and the Additional Freight for the Renewal of the Merchant Navy (AFRMM), applied over the value of freight, at rates that vary according to the type of shipping (8% in the case of long haul navigation).

3.4 Brazilian Exports of Agricultural Products

3.4.1 Market access

Opening new markets for the export of Brazilian products is a key theme for domestic exporters. It involves a number of factors such as gathering information on technical, sanitary and phytosanitary barriers in the target country and trade agreements entered between Brazil and trading partners.

The theme is also a priority for the new federal government initiated in January 2023. In this regard, MAPA recently recorded the opening of 37 new markets for the export of Brazilian agricultural products since the beginning of the year, allowing the import of bovine products, seeds, bovine and poultry genetic material, live animals, animal feed, fibers, fish and dairy products to various new destinations[43].

These are important themes for the agricultural sector, which faces many sanitary barriers - often baseless - to the export of agricultural products. As noted by the Ministry of Agriculture in a recent article on the subject[44], the opening of new markets by the government does not mean immediate shipments of products, and it is necessary to prepare the products and the exporters to meet the demands of potential new customers.

For example, several restrictions on Brazilian exports of agricultural products were removed after the Brazilian government and interested parties took action to ensure access to foreign markets, such as:

- **Beef and foot-and-mouth disease**: the guarantee that Brazil is a country free of foot-and-mouth disease without vaccination is a theme that is constantly addressed by Brazilian trading partners in more demanding markets and that impacts the Brazilian exports of the product. The theme is constantly treated by the federal government on various fronts, such as the Itamaraty[45] and MAPA[46].

- **Poultry flu and the blockade on exports of chicken and chicken by-products to Japan**: in recent work carried out by MAPA, the Japanese

[43] MAPA. Brasil abre 37 novos mercados externos para produtos agropecuários em oito meses de governo Lula. Available at: https://www.gov.br/agricultura/pt-br/assuntos/noticias/em-100-dias-mapa-contabiliza-abertura-de-mercados-internacionais-e-reaproximacao-do-brasil-com-a-china-e-a-uniao-europeia. Accessed on: 22 August 2023.
[44] MAPA. Brasil abre 37 novos mercados externos para produtos agropecuários em oito meses de governo Lula. Available at: https://www.gov.br/agricultura/pt-br/assuntos/noticias/em-100-dias-mapa-contabiliza-abertura-de-mercados-internacionais-e-reaproximacao-do-brasil-com-a-china-e-a-uniao-europeia. Accessed on: 22 August 2023.
[45] Available at: https://www.gov.br/mre/pt-br/canais_atendimento/imprensa/notas-a-imprensa/declaracao-conjunta-entre-a-republica-federativa-do-brasil-e-a-republica-popular-da-china-sobre-o-aprofundamento-da-parceria-estrategica-global-pequim-14-de-abril-de-2023. Accessed on: 21 August 2023.
[46] Available at: https://www.gov.br/agricultura/pt-br/assuntos/noticias/portaria-proibe-vacinacao-contra-febre-aftosa-em-sete-unidades-da-federacao. Accessed on: 21 August 2023.

government withdrew the suspension on the purchase of eggs, chicken meat and by-products that had been imposed to producers in the State of Santa Catarina[47].

- **Controls on beef exports to the United Kingdom**: in July 2023 it was announced that the strict controls on Brazilian exports of meat products to the United Kingdom would cease and that the system of authorizing establishments by indication of the Brazilian health authorities, the so-called "pre-listing", would be fully resumed. The audit recognized that Brazil had solved the issues related to its sanitary and phytosanitary regulatory system that had led to the adoption of strict controls. The British authorities' decision confirms the excellence of Brazil's official health controls, which guarantee the quality and safety of products consumed in Brazil and in the importing countries[48].

The foregoing examples depict how international trade issues can be relevant for agricultural exports. They all depict the importance of technical interaction between the sector and the federal government so that positive results such as those mentioned above may be swiftly achieved.

3.4.2 Technical Barriers (TBT), Sanitary and Phytosanitary Barriers (SPS) to International Trade and the impact thereof on Brazilian exports of agricultural products

As a member of the WTO, Brazil signed the agreements on Technical Barriers (TBT) and Sanitary and Phytosanitary Barriers (SPS) to International Trade.

The TBT Agreement[49] is intended to prevent technical regulations and conformity assessment procedures imposed by its member countries from constituting barriers to international trade. To this end, it establishes that technical regulations, technical standards and conformity assessment procedures adopted by the signatories should be no more restrictive to trade than is necessary to achieve a legitimate objective, taking into account the risks that the non-adoption of the regulation would create. Legitimate objectives include themes such as national security, the prevention of misleading trade practices, protection of human health or safety, animal or plant health or of the environment.[50]

The SPS Agreement[51] states that although the WTO members may and should adopt measures to ensure that food is safe for consumers and to prevent diseases

[47] MAPA. Carne de frango: Japão retira suspensão de exportação de Santa Catarina. Available at: Carne de frango: Japão retira suspensão de exportação de Santa Catarina. Accessed on: 22 August 2023.
[48] MAPA. Fim dos controles reforçados às exportações de carnes brasileiras para o Reino Unido. Available at: https://www.gov.br/agricultura/pt-br/assuntos/noticias/fim-dos-controles-reforcados-as-exportacoes-de-carnes-brasileiras-para-o-reino-unido. Accessed on: 22 August 2023.
[49] The issue of technical barriers to international trade was initially regulated under the GATT (General Agreement on Tariffs and Trade), specifically during the Tokyo Round of Negotiations (1973-1979). In 1995, the Standard Code was signed, which gave rise to the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Barriers (SPS). Available at: https://portal.apexbrasil.com.br/tbt-em-pauta-edicao-1/. Accessed on: 21 August 2023.
[50] Detailed information available at: https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm. Accessed on: 21 August 2023.
[51] Similar to the TBT Agreement, the issues discussed under the SPS Agreement had already been the subject of previous GATT evaluations during the Tokyo Round. The SPS Agreement was implemented in the WTO in 1995, during the Uruguay Round. For more information visit: wto.org/english/tratop_e/sps_e/spsund_e.htm. Accessed on: 21 August 2023.

from spreading between animals and plants, such measures must be based on scientific evidence, avoiding the adoption of measures that could lead to unnecessary barriers to international trade. In this context, the objectives of the SPS Agreement include increasing the transparency of sanitary and phytosanitary measures; encouraging member countries to adopt measures that are consistent with international parameters, guidelines and recommendations, insofar as these standards are usually higher than those imposed domestically.

Both the TBT Agreement and the SPS Agreement establish committees (TBT Committee and SPS Committee) to provide a forum for consultation on technical barriers to trade and food, plant and animal safety issues, respectively. Particularly in regard to the TBT Committee, representatives of various international intergovernmental organizations, including Codex, WOAH, IPPC, WHO, UNCTAD and the International Standards Organization (ISO) participate as observers to assess the technicality and suitability of the measures imposed by the member countries.

Brazil is a significant user of these WTO committees, actively participating and being one of the largest users of measures. In the SPS Committee, Brazil has also been very active, submitting 52 notifications as a complainant, responding to 19 as a respondent, and supporting 51 discussions presented by other members between 1995 and 2023. Several of these notifications concern what the Brazilian government considers to be unreasonable restrictions on Brazilian exports in the agricultural sector. For example, in 2023, Brazil submitted representations to the SPS Committee regarding restrictions imposed by Canada on imports of Brazilian pork originating in areas internationally recognized as free of foot-and-mouth disease without vaccination, health requirements imposed by Thailand on imports of wet blue leather, and restrictions imposed by Chinese Taipei (Taiwan) on imports of poultry products and beef. In 2022, Brazil presented other motions before the Committee related to the agricultural sector, such as the unjustified delay by the United States in opening the market for citrus products; Mexico's restrictions on pork imports; Peru's restrictions on pork imports[52].

In the TBT Committee Brazil appears as the third country that most submitted notifications in 2022 (380 notifications), behind Uganda (first place; 533 notifications) and the United States (second place; 455 notifications)[53].

At the level of the TBT Committee, the Brazilian government has raised relevant discussions regarding the agricultural sector, such as (i) restrictions imposed by the European Union on the use of the chlorothanol pesticide; (ii) administrative measure under discussion in China regarding the registration of foods and manufacturers of imported food; (iii) the non-renewal by the European Union of the authorization for the use of the mancozeb pesticide; (iv) the imposition by Indonesia of restrictions related to halal requirements for the import of products; among others.

On several occasions these notifications, along with the diplomatic efforts of the Brazilian government and the action and/or correction of certain situations by the

[52] To additional information, access: Search trade concerns - ePing SPS&TBT platform (wto.org). Accessed on: 22 Augu

[53] Brazil remains the third country with the most notifications also in the period from 1995 to 2022. WTO. TWENTY-EIGHTH ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE TBT AGREEMENT. Available at: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/50.pdf&Open=True. Accessed on: 21 August 2023.

interested parties, have been essential to settle these issues and guarantee access to these markets, as already mentioned in the market access section above.

It is important to note that although the Brazilian government acts directly on these themes before the WTO, it is up to the sectors affected to provide support and subsidies to the Brazilian diplomats in order to defend the interests of the sector.[54]

3.4.3 Trade protection measures imposed on Brazilian agricultural products exports

Another essential theme for Brazilian exporters is the existence of trade protection measures adopted by other countries that can significantly affect the competitiveness of their products in the destination market.

A list of some trade protection measures adopted against the Brazilian exports of agricultural product, provided by DECOM/MDIC follows:

- Safeguard measures imposed by Ukraine on 21 May 2021, against Brazilian exports of fresh roses, until 10 April 2024.
- Safeguard measures imposed by Costa Rica on 19 August 2020, against Brazilian exports of white crystal sugar, until 19 August 2023.
- Antidumping duty imposed by South Africa in December 2021 against Brazilian exports of frozen chicken cuts. On 1 August 2022, the measure was suspended until 1 August 2023.
- Antidumping duty imposed by China on 17 February 2019 against Brazilian exports of chicken, until 16 February 2024.
- Antidumping duty imposed by the United States on 10 June 2022 against Brazilian exports of honey in natura, until 9 June 2027.
- Antidumping duty imposed by the United States on 16 February 2023 against Brazilian exports of lemon juice, until 15 February 2028.

3.4.4 Environmental barriers to Brazilian exports and the impacts thereof on the agricultural sector in Brazil

Environmental protection measures may be discussed before the WTO only when they affect the rights and obligations of States under the multilateral trade viewpoint.

However, due to the increasing concerns arising from the climate crisis, the WTO has clarified that the rules established by it do not pose a barrier for the adoption of robust environmental policies, as long as such measures do not characterize discrimination between member countries or are not protectionist measures supposedly related to environmental protection. In this regard, the WTO states that its position has shifted from merely avoiding that international trade rules

[54] Brazil remains the third country with the most notifications also in the period from 1995 to 2022. WTO. TWENTY-EIGHTH ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE TBT AGREEMENT. Available at: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/50.pdf&Open=True. Accessed on: 21 August 2023.

affect environmental issues to seeking positive contributions to achieving environmental goals desired by the international community.[55]

Thus, the European Union (EU) and other WTO members have recently adopted measures related to the climate crisis. Specifically, in the case of the EU, regulations related to the Carbon Border Adjustment Mechanism (CBAM)[56] and new regulations on deforestation-free supply chains have been recently adopted.[57]

3.4.4.1 CBAM

The CBAM is a measure resulting from the so-called European Green Deal[58], which corresponds to a sustainability plan adopted by the EU aiming to reduce greenhouse gas (GHG) emissions by 55% until 2030 and achieve climate neutrality by 2050. In this regard, the CBAM[59] consists of a mechanism that intends, in its initial phase, to collect data and after its effective adoption, tax the GHG emissions embedded in specific products imported into the EU in which production is energy-intensive[60]. The measure will broadly impact exporters of products supplied to the EU, including Brazilian exporters.

In practical terms, after the effective phase of the mechanism is enacted, European importers will need to acquire CBAM certificates equal to the amount of GHG emitted and embedded in specific products. The transitional phase will begin on 1 October 2023, and the regular phase on 1 January 2026.

According to a study published by Deloitte[61], although Brazil is not among the main 10 countries affected by the CBAM (as it does not have an export agenda to the EU predominantly formed by GHG-intensive products), the country's companies would be strongly exposed to the impacts of the CBAM, as they exported more than 1 billion Euros to the EU. In this regard, the measure has caused significant concern regarding possible impacts on Brazilian exports. Data from FIESP indicates that 15% of Brazilian exports were destined to the EU in 2022 (USD 50.9 billion), and the products that would be affected by the CBAM represent 4% of this total (USD 2.1 billion), especially iron and steel.[62]

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[55] WTO. DDG Paugam: WTO rules no barrier to ambitious environmental policies. Available at: https://www.wto.org/english/news_e/news21_e/ddgjp_16sep21_e.htm. Accessed on: 23 August 2023.
[56] Available at: https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en. Accessed on: 23 August 2023.
[57] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010. Available at: Regulation - 2023/1115 - EN - EUR-Lex. Accessed on: 23 August 2023
[58] To additional information access: https://environment.ec.europa.eu/news/green-deal-new-law-fight-global-deforestation-and-forest-degradation-driven-eu-production-and-2023-06-29_en. Accessed on: 23 August 2023.
[59] Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060. Available at: Regulation - 2023/955 - EN - EUR-Lex. Accessed on: 23 August 2023
[60] Initially cement, fertilizers, iron, steel, aluminum, electricity, hydrogen, chemicals, and polymers, and in the future, extended to other sectors.
[61] DELLOITE INSIGTHS. Giving green a chance climate change mitigation will alter global trade. Available at: https://www2.deloitte.com/xe/en/insights/economy/eu-climate-change-carbon-tariff-global-trade.html.%20Acesso%20em%20janeiro%20de%202022..html. Accessed on: 23 August 2023.
[62] FIESP. Mercado de carbono na União Europeia é avaliado na Fiesp. Available at: https://www.fiesp.com.br/mobile/noticias/?id=290960. Accessed on: 23 ago. 2023.

Agricultural products are not directly affected by the first phase of the CBAM. However, other sectors – including agriculture – will be included in subsequent phases of the measure, requiring attention to the theme by the sector. According to a communication from the Brazilian Confederation of Agriculture and Cattle Breeding (CAN).

The CNA considers "essential to understand how the measure will operate, with agricultural product trade as potential targets." Thus, the entity highlights that the study aims to contribute to, in the future, avoid trade barriers to Brazilian agricultural products and to support the government with technical basis on the new European mechanism.

The CNA also highlights that even if the agricultural products are not included in the preliminary phase of the measure, which should be in effect between 2023 and 2025, with full implementation as of 2026, it is possible to include new products, and agriculture faces the risk of being taxed.

"The Confederation finds that it is essential to understand how the CBAM will operate, in addition to analyze it vis-à-vis the international trade rules and the Paris Agreement, to protect Brazilian agricultural exports," it said in a release.[63]

3.4.4.2 Regulation on deforestation-free supply chains

Another measure recently implemented by the EU was the regulation on deforestation-free supply chains.[64]

The measure, approved by the European Parliament on 19 April 2023, forbids the import of products from areas that have any level of deforestation carried out legally or illegally from December 2020 onwards. The regulation applies to various products found in the Brazilian production chain, such as soybean, coffee, beef/leather, cocoa/chocolate, wood/furniture, and rubber. In order to be imported into Europe from the end of next year, the products must undergo due diligence checks to ensure that they have not been produced in areas of legal or illegal deforestation.

Failure to comply with the regulation may result in suspension of import trade, seizure or total destruction of products, in addition to fines of up to 4% of the responsible operator's annual revenues. In order to enter the European territory, the commodities must undergo strict checking to repeal the possibility that they were produced in deforested areas.

This is a major concern for the agricultural sector, considering that, according to MAPA, the EU is the second-largest destination for the sector's exports.[65]

Among the sector's concerns regarding the regulation are the following points: (i) the criteria for classifying countries do not take into account the difference in the

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[63] AGRONEWS. Vai sobrar para o agro? CNA explica taxação de carbono na fronteira da UE. Available at: https://news.agrofy.com.br/noticia/200807/vai-sobrar-o-agro-cna-explica-taxacao-carbono-na-fronteira-da-ue. Accessed on: 23 ago. 2023.

[64] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010. Available at: Regulation - 2023/1115 - EN - EUR-Lex. Accessed on: 23 ago.2023

[65] CNA. CNA debate impactos da Lei Antidesmatamento da União Europeia. Available at: https://www.cnabrasil.org.br/noticias/cna-debate-impactos-da-lei-antidesmatamento-da-uniao-europeia. Accessed on: 23 August 2023.

level of socioeconomic development; (ii) the punitive and non-cooperative aspect of the regulation, which disregards the sustainable practices already adopted in Brazil, among others.

In this regard, the Secretary of Foreign Trade of MDIC, Tatiana Prazeres, stated in a hearing on the subject held in the Federal Senate on 11 July 2023, that the measure is unilateral, has extraterritorial effect, and would affect 34% of the products that Brazil exported to the European Union in 2022 and, therefore, according to the Secretary, there is a possibility that Brazil will challenge the regulation before the WTO.[66]

The theme has been broadly debated in the sector and before the government and may result in relevant actions before the WTO. This is a good example of the relevance of foreign trade discussions for the agricultural sector. It is essential for Brazilian exporters to follow-up on this theme, particularly considering the relevance of the sector's exports to Europe.

3.4.5 Quotas for Brazilian agricultural product exports to the European Union

According to the WTO definition, tariff quotas (or "export quotas") comprise a certain quantity of a product to which a lower import tax rate applies rather than the normal tariff[67]. Currently, the matter is regulated in Brazil by SECEX Ordinance No. 72/2020, which has been updated, especially regarding the provisions that address the volume of products that comprise the quotas and the value thereof[68]. Additionally, it also establishes the criteria for allocating tariff quotas among market agents and the control procedures to be observed.

According to the aforesaid ordinance, as an exporter of agricultural products Brazil enjoys tariff benefits with the European Union, the United Kingdom and Colombia. The products subject to export quotas include beef, chicken, sugar, and milk (the latter in relation to Colombia), the volumes and tariffs of which are detailed in the regulation.

Specifically within the European Union, the tariff quotas applicable to exports from Brazil originated from the GATT treaty of 1994 and the Uruguay Round, which established a schedule for the European Union to grant quotas for the export of agricultural products. According to a 2018 study by the Brazilian Trade and Investment Promotion Agency (ApexBrasil), the live animals and animal products

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[66] CÂMARA DOS DEPUTADOS. Diante de impactos comerciais, Brasil pode recorrer à OMC contra lei europeia sobre desmatamento. Available at: https://www.camara.leg.br/noticias/979331-diante-de-impactos-comerciais-brasil-pode-recorrer-a-omc-contra-lei-europeia-sobre-desmatamento/. Accessed on: 23 August 2023.

[67] Available at: http://www.apexbrasil.com.br/inteligenciamercado/downloadestudo?arquivo=ce0f015c-418f-4eed-acb7-990c58f0c550.pdf. Accessed on: 22 August 2023.

[68] SECEX Ordinance No. 72, of 18 December 2020, available at: https://www.gov.br/siscomex/pt-br/legislacao/copy3_of_PortariaSECEXn72de2020.pdf. Accessed on: 22 ago. 2023. The Ordinance does not regulate tariff quotas for sugar exports to the United States, which are regulated by Normative Instruction No. 29, of 21 June 2018, from the Ministry of Agriculture, Livestock and Supply (MAPA).

sector was probably the most affected by measures on trade conditions (including tariff quotas).[69]

Currently, through the so-called "Hilton Quota"[70], Brazil has a quota of 8,951 tons of fresh beef per year that can be exported to the European Union at an in-quota rate of 20% (in addition to another 1,049 tons to the United Kingdom subject to the same tariff). For the poultry sector, different tariffs apply to preparations of roosters and hens, turkey meat, and other poultry meats, salted or in brine.[71]

Regarding the quotas applicable to Brazilian sugar exports subject to tariff quotas (including exports to the United States, as further detailed below), it is noteworthy that, in Brazil, the quotas are internally directed to sugar-producing mills located in the North and Northeast regions, pursuant to a legal provision in Law 9.362 of 1996[7273].

Sugar quotas for the United States were regulated by MAPA[74], having been established that the distribution of quotas would be based on each mill's participation in the total sugar production (in tons) of the North and Northeast regions, based on the immediately preceding harvest.

The tariff quotas granted by the United States on sugar imports are related to a context of strong protection of its domestic sugar production, especially considering that the United States is one of the largest sugar producers in the world[75]. Therefore, the United States generally imposes a high tariff on sugar imports in order to strengthen its domestic industry. However, as a result of international negotiations, the country began to establish a certain annual volume of sugar imports with significant tariff reductions, from which Brazil has benefited.[76]

It is common for Brazil and the United States to negotiate additional quotas to the standard annual quota for sugar exports from Brazil, which are also allocated by MAPA to the production plants located in the North and Northeast regions of Brazil.

Notwithstanding the foregoing comments and observations, some changes are likely to occur due to a more protectionist stance of the U.S. government under the presidency of Donald Trump, and the negotiation of new tariffs on products originating from Brazil's agribusiness

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[69] Available at http://www.apexbrasil.com.br/inteligenciamercado/downloadestudo?arquivo=ce0f015c-418f-4eed-acb7-990c58f0c550.pdf. Accessed on: 22 August 2023.
[70] Article 8 and following of SECEX Ordinance No. 72/2020.
[71] Article 18 of SECEX Ordinance No. 72/2020.
[72] Article 7 of Law No. 9,362 of 13 December 1996.
[73] PEREIRA NETO, C. M. da S., ADAMI, M. P., CARVALHO, F. M. de. (2016). Desregulamentação e continuidade na intervenção estatal sobre o domínio econômico: o caso das cotas de importação favorecida de açúcar. Revista De Direito Administrativo, 272, 175–208. Available at: https://doi.org/10.12660/rda.v272.2016.64302. Accessed on: 23 August 2023.
[74] Normative Instruction No. 29, of 21 June 2018.
[75] Available at: http://www.apexbrasil.com.br/inteligenciamercado/downloadestudo?arquivo=5c5ac1dc-21e3-4cd4-b2dc-a597472d83a1.pdf. Accessed on: 23 August 2023.
[76] PEREIRA NETO, C. M. da S., ADAMI, M. P., CARVALHO, F. M. de. (2016). Desregulamentação e continuidade na intervenção estatal sobre o domínio econômico: o caso das cotas de importação favorecida de açúcar. Revista De Direito Administrativo, 272, 175–208. Available at: https://doi.org/10.12660/rda.v272.2016.64302.

3.4.6 Regulatory and tax issues related to exports

3.4.6.1 Export License

Brazil's exports are also supervised by SECEX and BACEN. SECEX is simplifying the legal requirements for the exportation of goods. Currently, exporters must be registered in the SISCOMEX system.

For phytosanitary reasons, the export of seeds requires the consent of the Ministry of Agriculture. Brazilian establishments that export animal products must be previously inspected and registered with the Ministry of Agriculture.

3.4.6.2 Forms of Payment and Foreign Currency Exchange in Exports

According to the resolutions of the Central Bank of Brazil on the exchange market, the export value may be received through: crediting of the amount to an account held by the exporter at an institution abroad (the amounts can be fully kept abroad and do not need to be transferred to Brazil); crediting to an account held abroad by an institution authorized to operate in the exchange market in Brazil; international credit card (in this case, the exporter does not carry out the exchange operation, receiving the amount, already in reais, credited directly to its credit card); transfer from a reais account that the foreign importer holds in Brazil; payment order from abroad, in reais or foreign currency, through an institution authorized to operate in the exchange market by the Central Bank of Brazil; international postal order (up to an amount equal to USD 50,000 and subject to the specific conditions of the Post Office); in cash (subject to specific regulations regarding the inflow of cash into Brazil); or international payment or transfer service (eFX).

Export revenues that inflow into/received in Brazil may be in reais or foreign currency, irrespective of the currency stated in the commercial deal, and may be received either before or after the shipment of goods or the supplying of the services.

In both the cases of resources inflowing into Brazil and in the cases where the resources are held abroad, the advance receipt of the export payment having a payment term of more than 360 days is subject to reporting to the Central Bank of Brazil whenever the transaction amount is equal to or greater than USD 1,000,000 (or its equivalent in other currencies).

In the cases of exchange coverage, the exchange agreement may be closed before or after the goods are shipped or the services are supplied. If exchange agreement is liquidated after the date of shipment of goods or the supply of services, the maximum term between such events is 1,500 days. According to current regulations, the shipment date is considered to be: (i) the date of issuance of the bill of lading; (ii) the date of clearance, if the date of issuance of the bill of lading is not available; or (iii) the date of the document equivalent to the bill of lading, if the goods are covered by a special customs regime.

3.4.6.3 Taxation of Exports

The Brazilian Constitution establishes that export operations are exempted from the IPI, ICMS and PIS/COFINS taxes.

Moreover, the Brazilian government tax policy tends to lower the tax burden applicable to exports originating from Brazil. Therefore, most export operations originating from Brazil are not subject to taxes, except for certain products that

are subject to Export Tax (such as leather and guns). The Export Tax applies on an ad valorem basis and the tax rates vary depending on the type of product exported.

Corporate Structures

4 Corporate Structures

Under the business system adopted by the Brazilian Civil Code, a business may be carried out by an individual, who assumes all risks associated with the business, or a legal entity, which results from united efforts of individuals or other legal entities, to attain a specific economic goal.

When such specific economic goal is to carry out activities consisting in (i) the supplying of materials or equipment; (ii) production; (iii) industrialization, (iv) commercialization and distribution of agricultural products and livestock, (v) services, rendered by individuals or legal entities, the company falls under the field of agribusiness.

Agribusiness, similar to most of the business activities carried out in Brazil, may be conducted through the incorporation of legal entities or the establishment of branches when related to foreign companies.

4.1 Branch, Representative Office or Agency of a Foreign Company

Although authorization to open branches of companies organized under Brazilian law is freely granted, prior authorization of the President is required to open a branch of a foreign company. The authorization process is entirely discretionary and lengthy, possibly lasting more than six months. In addition, unfavorable liability and tax consequences aspects render this option unfit in most cases.

4.2 Legal Entities

The incorporation of a legal entity with the purpose of carrying out agribusiness in Brazil, as applies to most types of legal entities, does not require any prior government approval, and the legal entity is usually a limited liability company, a corporation or a cooperative organization.

Brazilian law foresees several types of companies. The most frequently used corporate structures are the corporation (Sociedade Anônima or S.A.) and the limited liability company (Sociedade Limitada or LTDA). This is because in both cases the shareholders or partners have limited liability. The law vests legal status to these legal entities as entities separated from its shareholders or partners.

Brazilian law foresees other forms of association such as joint ventures and consortia or special types of partnership, which do not have a legal status separated from the individuals; in these cases, the parties convene rights and obligations individually for the common benefit of the group. These other contractual structures are usually adopted for single purposes or non-corporate businesses.

Brazilian law also foresees the possibility of organized cooperatives, a specific legal form of civil rather than commercial nature, widely used in agribusiness activities and gaining more space and relevance in the sector due to its popularity among producers and its ability to boost economic and social benefits for its members and the related communities. Cooperatives usually are comprised of individuals engaged in a certain profession or other common activities or

companies; or who are connected to a certain entity; or, sometimes, by legal entities classified as micro companies or small businesses and that have as their purpose the increase and strengthening of the economic activities carried out by their associates; or certain other non-profit entities. According to the Organization of Brazilian Cooperatives (OCB),[77] the cooperatives account for almost 50% of the national production of grains in Brazil.

Sections 4.2.1 and 4.2.2. below set out the most important legal features of the cooperatives in Brazil.

4.2.1 Cooperatives

The Brazilian Constitution expressly mentions cooperatives in its Article 5, XVIII, which is dedicated to the protection of collective and individual fundamental rights of all Brazilian citizens. It establishes that cooperatives shall be freely organized and shall not be subject to any governmental intervention. In regard to this the Brazilian Constitution also determines that the government shall stimulate and support the organization of cooperatives, including by granting it special tax systems and credit lines.

Cooperatives are legal entities that have a specific form and legal nature, not being subject to bankruptcy rules and have as its purpose the rendering of services to its associates. Scholars state that cooperatives are based on a democratic principle according to which the capital does not determine the associate's participation. The capital is solely a tool needed to attain the cooperative's purpose. Therefore, the participation in the cooperative's management and control is related directly to the individuals that comprise the entity. Their share in the economic results depends on their production and the costs are covered by the members of the cooperative shared directly proportional to the use of services. However, the cooperative itself is not profit-oriented.

As a general rule, cooperatives are composed of individuals who engage in a certain profession or other common activities; or who are bound to a certain entity; or, exceptionally, by legal entities classified as micro companies or small businesses and that have as their purpose economic activities carried out by individuals; or, further, certain other non-profit entities. Its control is held by all of the associates, exercised through general meeting resolutions. Management is performed by an elected director or a board of directors, who must be associates of the cooperative.

Law No. 5,764/1971 and its subsequent amendments regulate cooperatives in Brazil. The Brazilian Civil Code (effective 11 January 2003) also establishes principles and rules related to this type of organization. These regulations establish similar principles, which may be summarized as follows: (i) voluntary adhesion, being formed by associates in a number required to form its administration, with an unlimited number of associates; (ii) variable capital, represented by quotas, or exemption of a nominal capital; (iii) limitation on the number of quotas held by each associate, being allowed, however, the establishment of a proportional criteria if needed to attain its purpose; (iv) prohibition of assignment of the quotas to third parties; (v) respect to the "one individual one vote" principle; (vi) quorum for installation and voting proceedings of its general meeting based on the number of associates and not on the capital amount that they represent; and (vii) refund of the remaining net funds, respecting

[77] www.ocb.org.br

the proportion (pro rata) of operations performed by the associates, except if determined otherwise by the general meeting.

The liability of the associates of a cooperative may be limited or unlimited. The liability is limited in the cooperative where each associate is liable only for the value of his/her subscribed capital/quotas and for losses from the cooperative's operations proportionally to the associate's participation in such operations. On the other hand, liability is unlimited in a cooperative in which a member is jointly and severally liable, without limitation, for the cooperative's debt. This rule is established by the cooperative's statute, or in the case of the cooperative organized without a corporate capital. Whether liability is either limited or unlimited, the liability of the cooperative's associates will always be secondary.

According to the Brazilian Civil Code, when the law is vacant the cooperative shall be regulated by provisions applicable to plain partnerships (Sociedades Simples). However, all the features stated above must be respected.

Based on its purposes, the cooperatives are usually classified in three main groups:

(i) **Credit cooperatives**: Usually organized as a fund, formed by the capital of its associates and focused on extending loans to associates or other cooperatives.

(ii) **Production cooperatives**: Divided in two main groups: agricultural production and industrial production. Both are organized based on a spirit of cooperation between their associates. When the activity is related to agriculture or cattle breeding without any industrial process, it is known as an agricultural or rural cooperative. When its focus is the process of transforming agricultural products into manufactured products, it is known as an industrial cooperative.

(iii) **Consumption cooperatives**: Divided in two groups: personal consumption and industrial consumption. As a general rule these cooperatives are organized for the purpose of acquiring goods and products for the use of its associates or for resale.

4.2.2 Enrollment with the State Board of Commerce and the Corporate Taxpayers Registry

The companies engaged in agribusiness activities are required to file their articles of organization or constitution documents (e.g. articles of organization or statute) with the Board of Commerce of the State in which they are established.

Regarding foreign investments, the Brazilian Federal Revenue in its Normative Ruling IN No. 2,219 of 6 December 2022, determines that individuals and legal entities domiciled abroad must be enrolled with the Ministry of Finance's Individual Taxpayers Registry (CPF) and Corporate Taxpayers' Registry (CNPJ), respectively.

This requirement applies to all legal entities and individuals that own assets and hold rights that are subject to public registration in Brazil, including real estate, vehicles, vessels, aircraft, equity interest in Brazilian companies, bank accounts, investments in the financial market, investments in the capital market, sale of intangible assets to Brazilian residents with a term of payment of more than 360 days, loans ("financings"), import finance operations, financial lease, operational lease, lease/rental of equipment and boat charter, import of assets into Brazil

(without exchange coverage) for equity investment in Brazilian companies, and cash loans extended to Brazilian residents.

Environmental Protection

5 Environmental Protection

5.1 General Provisions

Agribusinesses carried out in Brazil are subject to various rules and licensing requirements regarding atmospheric emissions, soil and water pollution, as well as forestry issues, among others. These requirements are established in federal, state and municipal laws.

According to the Brazilian Constitution, the federal government, the states and the federal district have authority to legislate concurrently on environmental matters. The Brazilian Constitution also establishes three levels of environmental liability: civil, administrative and criminal.

At the federal level, the first systematic environmental legislation enacted in Brazil was Law No. 6,938/81, which introduced the "National Environmental Policy", establishing instruments and mechanisms for environmental protection. This law introduced, among other important innovations, strict civil law liability for polluters (i.e., responsibility irrespective of fault), licensing procedural rules and administrative departments to legislate on environmental matters and enforce such rules.

The environmental agencies also play an important role in the enforcement of environmental law by (i) controlling the quality of the water publicly supplied and other specific uses; (ii) establishing environmental rules and emissions and pollution standards in regard to the atmosphere, water and soil; (iii) issuing licenses for potential pollution sources; (iv) monitoring polluting activities; (v) applying penalties for violation of the rules; and (vi) claiming the temporary or permanent shutdown of businesses in the event of major environmental violations. In addition, the state and municipal environmental authorities are authorized to issue standards and requirements that are more stringent than those established by the federal government when there is regional or local interest.

As previously stated, polluters in Brazil are subject to civil, administrative and criminal liability. At the civil law level polluters in Brazil are subject to joint and several liability. This means that a party co-responsible for environmental damage may be held liable for the entire damages amount, however the co-responsible party is entitled to regressive action against the primarily liable party to recover the damages that it paid alone.

In general, the administrative penalties against offenders at both federal and state levels may include fines, denial of access to public subsidies and financing, and a partial or total suspension of their activities and operations, as established in Federal Decree No. 6,514/08, which regulates Law No. 9,605/98 (the "Federal Environmental Crimes Law").

Criminal penalties are established in the Federal Environmental Crimes Law. Such penalties apply to both legal entities and individuals that violate its provisions and may involve incarceration or detention, or limit or restrict certain rights (such as the rendering of services to a community, temporary cancellation of an authorization or license and shutdown of operations). In regard to legal entities, the following

criminal sanctions may be applied severally, cumulatively or alternatively: fines; restriction of right or community service.

5.2 Environmental Licenses and Permits

In Brazil, Federal, state and municipal laws determine that activities that use natural resources or that may cause pollution, are required to obtain certain licenses from the environmental protection authorities prior to the construction, installation, expansion or operation thereof.[78]

The applicable environmental licenses include: (i) Provisory License (the validity of this license cannot exceed five years); (ii) Installation License (valid for up to six years); and (iii) Operation License (valid for at minimum four years and at maximum 10 years). There are also other licenses that must be obtained in addition to the foregoing, such as authorization to capture water, authorization for transportation of waste and/or forestry products, among others.

Supplementary Law No. 140/11, which regulates the environmental licensing authority, attributes (i) to the federal authorities the authority to license special activities, such as those located or conducted in more than one state, and in preservation areas created by the federal government, among others; (ii) to the municipalities the authority to license activities considered by the state as being of local impact; and (iii) to the states the authority to license the activities not included in the authority of the municipalities and federal authorities.

Some states have specific legislation on with environmental licensing of rural activities. In the State of Mato Grosso, for example, Supplementary Law No. 38/95, which regulates the licensing of rural property, establishes that rural properties must apply for a Single Environmental License (Licença Ambiental Única or LAU) to operate.

On 15 May 2021, the House of Representatives approved the main text of Bill No. 3,729/2004, which enacts the General Environmental Licensing Law and intends to simplify and expedite the respective proceeding. The text of the bill, which is being reviewed by the Senate, may affect the licensing of rural activities if approved. This is one of many ongoing initiatives to simplify and expedite licensing proceedings, but proposals of this nature are always strongly opposed by pro-environment groups.

5.3 Environmental Impact Assessment

The Brazilian Constitution determines in its Article 225, IV that the government must require a preliminary environmental impact study for the installation of an activity that can potentially cause substantial environmental degradation. This study must be drafted by the entrepreneur in the environmental licensing proceeding, usually before the Preliminary License issues, precisely because it relates to the analysis of the technical and environmental feasibility thereof.

Thus, in general the environmental impact studies is intended to assess the potential environmental impact of the activity to be licensed and propose measures to prevent, control, and/or mitigate the impact.

[78] Law No. 6,938/1981, Article 10; Federal Decree No. 99,274/1990, Article 17; Law No. 6,803/1980, Article 9; Conama Resolution No. 237/1997.

There are different types of environmental impact studies and their complexity varies according to the potential environmental impact of the project or activity to be licensed. In regard to projects that have a lower environmental impact, usually the studies are more simplified, such as, for example the Simplified Environmental Report (Relatório Ambiental Simplificado or RAS). In regard to projects that have a substantial impact on the environment, according to CONAMA Resolution No. 01/1986, the required study is the Environmental Impact Study and Report (Estudo de Impacto Ambiental e Relatório de Impacto Ambiental or EIA/RIMA).

Furthermore, pursuant to the state's authority to license certain activities and ventures (CONAMA Resolution No. 237/1997), some states of Brazil have created additional types of environmental studies. In the State of Bahia, for example, there is the Environmental Study for Medium Impact Activities (EMI) and the Environmental Study for Small Impact Activities (EPI) (State Decree No. 14,024/2012). In the State of Mato Grosso do Sul, there is the Environmental Technical Proposal (PTA), the Preliminary Environmental Study (EAP), and the Environmental Control Report (RCA) (SEMADE Resolution No. 9/2015).

In general, the legislation (whether federal, state, or municipal) expressly establishes the activities that are subject to which type if environmental impact study. The EIA/RIMA, for example, is mandatory in regard to the activities established in CONAMA Resolution No. 01/86, such as the economic exploitation of wood in areas larger than 100 hectares[79] or agricultural projects in areas larger than 1,000 hectares[80]. In the State of Bahia, State Decree No. 14,024/2012 determines that the breeding of cattle, mules, and horses in an installed capacity of more than 2,000 specimens, the breeding of pigs in an installed capacity of more than 5,000 specimens, and the forest plantations for charcoal production exceeding 35,000 MDC/month, among others are also subject to the EIA/RIMA study. The State of Mato Grosso do Sul determines that some types of agricultural activities are subject to PTA or RAS, but when it comes to pig farming with more than 30,001 specimens, the required study is the EIA/RIMA.

In any case, the definition of the study to be carried out is ultimately subject to a case-by-case analysis by the licensing authority.

The EIA/RIMA, in addition to following the "Reference Guide" prepared by the licensing authority, has its minimum content legally defined in CONAMA Resolution No. 01/1986.

The EIA must contain (i) all technological and location alternatives of the project; (ii) identification and assessment of the environmental impacts that may occur during the project implementation and presentation of applicable alternatives; (iii) identification of the geographical areas that will be directly and indirectly affected by such impacts; (iv) environmental diagnosis of the area of influence, taking into consideration the physical, socio-economic, environmental and zoning aspects; (v) definition of mitigation measures; and (vi) draft of monitoring programs.

The RIMA must reflect the conclusions of the EIA and its contents must include: (i) the objectives of the project and its consistency with government policies and programs; (ii) summary of the environmental diagnosis; (iii) information on the

[79] Areas smaller than 100 hectares may also be subject to EIA/RIMA in case it is significant in terms of percentage or it is considered environmentally relevant.
[80] Areas smaller than 1,000 hectares may also be subject to EIA/RIMA in case it is significant in terms of percentage or it is considered environmentally relevant.

future environmental quality of the areas of influence; (iv) recommendation of the most favorable alternative, etc. The drafting and approval process of the EIA/RIMA may also require a public hearing for comments and participation of the affected community, nongovernmental organizations and other entities, which is not common in the drafting of more simplified studies.

It should be emphasized that according to Law No. 9,985/2000, which established the Brazilian System of Conservation Units (SNUC Law), the activities that have major environmental impact – and, therefore, subject to the submission of the EIA/RIMA – are subject to the payment of an "environmental compensation". This "environmental compensation" consists in a payment of an amount that will be used to implement the conservation units under the SNUC Law and cannot be less than 0.5% of the total estimated costs for the project's implementation, hence the percentage shall be set by the licensing authority according to the degree of environmental impact caused by the project.

5.4 Forest Protection

The Brazilian Constitution establishes specially protected areas in Brazil, which must be preserved and, for this purpose, receive special treatment from the sub-constitutional laws. Thus, forests, coastal areas, the Amazon region and the Pantanal (wetlands) - where agribusiness is very common - are areas considered national heritage and, therefore, the exploitation and use of these areas receive special treatment by the law. In addition, the Brazilian Constitution establishes that the law and the federal government shall define specially protected areas.

The main laws that define the types of specially protected areas in Brazil are as follows: (i) the Brazilian Forestry Code (Law No. 12,651/12), which regulates the preservation of natural vegetation and establishes areas in rural properties that must be preserved; (ii) Law No. 9,985/00, which establishes the National System of Conservation Units (SNUC); and (iii) Law No. 11,428/06 (Atlantic Forest Biome Law), which regulates the use and protection of native vegetation in the Atlantic forest biome.

Additionally, some states have their own laws protecting certain types of vegetation, such as São Paulo's State Law No. 16,924/2019, which regulates the use and protection of native vegetation in the Cerrado biome in its territory.

Moreover, the Forestry Code allows rural property owners to establish an environmental easement to limit the use of all or part of the property for preservation, conservation or recovery of environmental resources purposes.

The main protected areas established in the environmental legislation are known as: (a) conservation units; (b) permanent preservation areas; and (c) legal reserves.

The SNUC Law, in its Article 2, I, defines **conservation unit** as "*a territorial area and its environmental resources, including territorial waters, with relevant natural characteristics, legally established by the government, with conservation objectives and defined limits, under a special administration system, to which adequate protection guarantees are applied.*" Conservation units are divided into two groups: (i) integral protection units, intended to preserve nature, being allowed only the indirect use of its natural resources, except in the cases established in the law; and (ii) sustainable use units, intended to match the conservation of nature with the sustainable use of a part of its natural resources.

Integral protection units are divided into five categories: (i) **ecological station**, which is intended to preserve nature and conduct scientific research; (ii) **biological reserve**, intended for full preservation of the biota and other natural features in its boundaries, without direct human intervention or environmental changes, except for measures to recover altered ecosystems and handling action necessary to recover and preserve natural balance, biological diversity, and natural ecological processes; (iii) **national park**, intended basically to preserve natural ecosystems of great ecological importance and scenic beauty, enabling scientific research, environmental education and interpretation activities, recreation in contact with nature, and ecotourism; (iv) **natural monument**, to preserve rare, unique, or scenic natural sites; and (v) **wildlife refuge**, to protect natural environments where conditions for the existence or reproduction of species or communities of local flora and resident or migratory fauna are assured.

Regarding the **permanent preservation areas** (área de preservação permanente or APP), according to Article 3, II of the Forestry Code, it is a "*protected area, whether covered with native vegetation or not, with the environmental function of preserving water resources, the landscape, geological stability and the biodiversity, facilitating the genetic flow of fauna and flora, protecting the soil and ensuring the well-being of human populations*". The environmental legislation protects APPs because of the importance of their functions to the environmental systems. Some examples of APPs are areas near lagoons, lakes, and rivers; margins of any natural watercourse; hilltops and mountains; mangroves, among others. The exploitation and suppression of vegetation in such areas must be authorized by the competent environmental authority, and this authorization is granted only in cases considered to be of public utility, social interest or low environmental impact.

With regard to the APPs, Law No. 14,285/21, which amended the Forestry Code, was published on 30 December 2021. Among the main changes, it allowed municipalities and the Federal District to define the measurement of the APP around watercourses in urban areas. However, on 18 April 2022, some political parties challenged the constitutionality of such provisions before the Supreme Court (STF) through Direct Action of Unconstitutionality (ADI) 7146, which was distributed to Minister Justice André Mendonça. The plaintiffs allege that the measure reverses the entire logic of the constitutional system of separation of powers, for that the environmental laws of sub national entities can only increase the environmental strictness of national norms, never decrease it. The ruling of the case is currently pending.

There are also **legal reserve areas**, which, according to Article 3, III of the Forestry Code, are areas in a rural property or possession that are intended to assure the sustainable economic use of the natural resources of the rural property, contribute to the conservation and rehabilitation of the ecological processes and promote the conservation of the biodiversity, as well as to shelter and protect wildlife and native flora.

Such areas cannot be altered or exploited without the authorization of the competent authority. The percentage of legal reserves varies according to the biome in which the property is located and the legal reserve areas must be approved by the competent environmental authority and registered in the Rural Environmental Registry (Cadastro Ambiental Rural or CAR).

In certain cases the Forestry Code allows the legal reserve area to be compensated with areas not located in the same rural property, or to include

permanent preservation areas in the calculation of the legal reserve. This law also establishes that, in some cases, the legal reserve area of rural properties located in the Legal Amazon area can be reduced from 80% to as low as 50%. However, this is an exception that must be analyzed jointly with the state and municipal legislation, and must be previously approved by the relevant environmental authority.

Regarding the CAR registry[81], it is important to clarify that it was introduced by the Forestry Code and is regulated by Normative Instruction MMA/IN No. 2/2014. It consists in a "*national electronic public registry, mandatory for all rural properties, intended to integrate the environmental information of the rural properties and possessions in the permanent preservation areas (PPA), Restricted Use Areas, Legal Reserves, remnants of forests and other forms of native vegetation, and consolidated areas, forming a database for control, monitoring, environmental and economic planning, and combating deforestation.*" The registration in the CAR registry is the first step to obtain the environmental good standing of the property and includes: data on the owner, rural possessor or person directly responsible for the rural property; data on documents proving ownership and/or possession of the property; and geo-referenced information on the property perimeter, areas of social interest and areas of public utility, with information on the location of remnants of the native vegetation, Permanent Preservation Areas, Restricted Use Areas, Consolidated Areas and Legal Reserves.

The Forestry Code also established the Environmental Regularization Program (PRA) for owners or possessors of rural properties that are in an irregular status. The intention is to regularize debt upon the registration of the property in the CAR registry and the signing of a commitment instrument undertaking to do so. With the signing of the commitment instrument any penalties resulting from infractions that occurred before 22 July 2008, particularly the irregular suppression of vegetation in an APP, legal reserve, and restricted use areas, shall be suspended.

It is also important to emphasize that IBAMA Normative Instruction IN No. 4/2011 established procedures for drafting the Degraded Area Recovery Project (PRAD). The PRAD contains information, diagnostics, surveys and studies that enable an assessment of the degradation of a certain area and a definition of the appropriate measures for the recovery thereof. The PRAD is essential in the process of regularizing rural areas.

The irregular exploitation of environmentally protected areas may subject the agent to liability at the following levels: (i) administrative, at which penalties may be applied, such as: warning, fine (ranging from BRL 50 to BRL 50,000,000), suspension of activities, among others; (ii) criminal, according to the Environmental Crimes Law (Law No. 9,605/1998); and (iii) civil, for any damages caused.

Furthermore, in recent years issues concerning the sustainability and environmental protection have gained more attention and exposure. On 16 September 2021, the Brazilian Central Bank (BCB) published Resolution No. 140/2021, which, among other provisions, established restrictions on the access to rural credit on the grounds of non-compliance with forestry duties, such as: (a) not grant rural credit to producers who are not registered or whose registration has been cancelled in the Rural Environment Registry (CAR), subject to the conditions and exceptions established therein; (b) not grant rural credit to ventures located wholly or partially in a Conservation Units, unless the economic activity is in

[81] Available at: https://www.car.gov.br/#/sobre. Accessed on: 17 April 2023

conformity with the Management Plan of the Conservation Unit, subject to the provisions of the law; (c) not grant rural credit to ventures located in the Amazon Biome when: (i) there is an embargo in effect due to the economic use of illegally deforested areas; or (ii) in a financing operation under the National Agrarian Reform Program, to a credit applicant that has restrictions in effect against it for having committed illegal deforestation according to the records of the National Institute of Colonization and Agrarian Reform (INCRA).

Additionally, Brazil has specific rules for the protection and use of indigenous lands and traditional communities. Brazilian legislation also establishes restrictions on the use and exploitation of areas with speleological, historical, and artistic heritage.

And, also, Law No. 14,119/2021 established the National Policy for the Payment of Environmental Services (PNPSA), which is intended to encourage the conservation of ecosystems, water resources, soil, biodiversity, genetic heritage and the traditional knowledge associated therewith, thereby valuing the ecosystem services economically, socially and culturally. Under the PNPSA, those who benefit from environmental services, such as water supply, oxygen production, and climate stability, for example, must pay for such through a voluntary transaction. On the other hand, those who provide such services are compensated for their contribution.

The PNPSA focuses on steps to maintain, recover and improve vegetation cover in priority conservation areas and it aims at combating habitat fragmentation and fosters the creation of ecological corridors. Payments can be made in various forms, including direct payment, monetary or non-monetary, provision of social improvements to rural and urban communities, Environmental Rural Quotas, and the commercialization of green bonds. This opens up opportunities for the monetization of protected areas and promotes the voluntary carbon market. In addition, the PNPSA includes provisions that affect taxation and create incentives for environmental protection, potentially becoming a great opportunity and relevant tool for controlling the negative effects of climate change.

5.5 Climate Change and Agribusiness

Internationally, Brazil plays a relevant role in climate change operations.

In 2015 the Paris Agreement was signed during COP 21, aiming to reduce global greenhouse gas emissions. This agreement replaced the Kyoto Protocol, which Brazil had used for many years to issue the Clean Development Mechanism (CDM). It is important to note that the CDM can be used under the Paris Agreement, provided certain requirements are met.

In 2016 Brazil completed the ratification process of the Paris Agreement following its approval by the National Congress (Federal Decree No. 9,073/2017), and the instrument was delivered to the United Nations on 21 September 2016.

Since then the Nationally Determined Contribution (NDC) has been in effect. Initially, Brazil committed to reducing greenhouse gas emissions by 37% below 2005 levels by 2025 and 43% by 2030. To achieve these reductions Brazil committed to increase the share of sustainable bioenergy in the energy matrix 18% by 2030, reaching an estimated 45% share of renewable energy in the energy matrix by 2030, and to recover and reforest 12 million hectares of forests by 2030.

It is important to mention that the baseline used was the Second National Inventory drafted by the Ministry of Science, Technology, and Innovation.

The Brazilian NDC was revised in 2020. Although the same reduction percentages were maintained, the baseline was changed to consider the Third National Inventory, which indicates that the emission of carbon dioxide equivalent (GtCO2e) in 2005 was 2.8 billion tons, and not 2.1 billion GtCO2e as was recorded in the Second National Inventory. The revision of the NDC was heavily criticized, as the new baseline would allow for higher greenhouse gas emissions than previously estimated, given that the percentages were maintained.

After the COP 26 held in Glasgow, Scotland, in 2021, Brazil announced its intention to revise its NDC again: a 50% reduction in emissions by 2030 compared to 2005, based on the Fourth National Emissions Inventory (which estimates that 2.562 billion GtCO2e were emitted in 2005). However, despite the increased percentage, the new target is still lower than the original target of 2015 when comparing the proposed metrics. Additionally, the commitments that Brazil assumed at COP 26 regarding zero deforestation by 2030 and a 30% reduction in methane emissions by 2030 were not incorporated in this revision.

On a national level, in 2009 the federal government launched the National Policy on Climate Change ("Política Nacional sobre Mudança do Clima" – PNMC – Law No. 12,187/2009) voluntarily committing to reduce GHGs emissions. To this end the federal government issued Federal Decree No. 9,578/2018, which consolidates the normative acts issued by the federal executive power on the matter. In order to achieve the goals that the country established, the Decree considers that certain steps should be taken, particularly: reduce the annual deforestation rate in the Legal Amazon region by 80% compared to the average between 1996 and 2005; reduce the annual deforestation rate in the Cerrado Biome by 40% compared to the average between 1999 and 2008; recover 15 million hectares of degraded pastures; expand the crop-livestock-forest integration system by 4 million hectares; expand the practice of no-till farming by 8 million hectares; expand forest plantation by 3 million hectares; etc. Specifically concerning the forestry sector, in 2019 the first federal pilot project for payments based on REDD+ results was approved by the Green Climate Fund Council, and Brazil is expected to receive approximately USD 96.5 million for results from reducing deforestation emissions in the Amazon region in 2014 and 2015. The project is expected to be completed in 2026.

Also in 2019, Federal Decree No. 10,144/19 issued, creating the National Commission for the Reduction of Greenhouse Gas Emissions from deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Forest Management, and Enhancement of Forest Carbon Stocks - REDD+. The Commission is an executive and advisory body of the States, the Federal District and the Ministry of the Environment, responsible for formulating guidelines and issuing directives for the implementation of the National REDD+ Strategy, compliance with REDD+ safeguards and REDD+ results payments in Brazil.

According to the federal decree, REDD+ results payments are considered payments from multiple sources in recognition of the emission reductions that were measured, reported, and verified along with policies, programs, projects, and steps taken at multiple levels. The reduced emissions and payments must be reconciled with a single accounting system and submitted to the United Nations Framework Convention on Climate Change (UNFCCC) to meet the Warsaw Framework for REDD+ and the provisions of the Paris Agreement (Article 2).

In 2020, the following three CONAREDD+ Guidelines issued to regulate the voluntary carbon market: (i) Ordinance No. 03/2020, which recognizes the contribution of the voluntary forest carbon market and promotes its operation in line with the relevant national rules and supranational legal instruments, and establishes that the recognition of the voluntary market by the federal government does not imply in the validation of methodologies, emission levels or any other aspect of voluntary projects; (ii) Ordinance No. 01/2020, which establishes a technical working group in the federal government to discuss the concept of safeguards in REDD+ projects and propose monitoring indicators for them; and (iii) Ordinance No. 02/2020, which establishes a technical working group in the federal government to discuss the Measurement, Reporting and Verification (MRV) of REDD+ results.

The REDD+ projects are aligned with voluntary emission reduction targets and although nothing is defined yet, there are strong indications that these projects will operate as parallel markets to serve different purposes. In 2020 the Ministry of the Environment created two programs regarding the payment of environmental services: Floresta+ (Ordinance No. 288/2020) and Floresta+ Carbon (Ordinance No. 518/2020).

The Floresta+ Program aims to promote: (i) the private market of payments for environmental services in areas maintained with native vegetation cover; and (ii) the articulation of public policies for the conservation and protection of native vegetation and climate change. For this purpose "environmental services" means the set of activities for the improvement and conservation of native vegetation in all biomes.

The Floresta+ Carbon Program aims to encourage the voluntary carbon market of carbon credits for the protection of native forests. The voluntary carbon credit market for reducing emissions from deforestation and forest degradation, recognized by CONAREDD+ in Resolution No. 3/2020 shall not entail any obligation regarding the accounting, adjustment, or registration in the national emissions inventory by the federal government, thus allowing the voluntary market to establish its own rules and parameters, without any responsibility or correlation with the commitments assumed by the Brazilian government.

It is also important to emphasize that since 2011 Brazil has been involved in the PMR Project under the guidance of the Ministry of Economy, in partnership with the World Bank. The main purpose of the project is to discuss the convenience and opportunity of including emission pricing (through taxes and/or carbon market) as part of the instruments for implementing the PNMC post-2020. The project also aims to evaluate different options for these instruments: (i) price regulation through the establishment of emission taxes; (ii) emission regulation through the adoption of an emission trading system (carbon market); or (iii) a combination of both.

In addition, the Brazilian Forestry Code and the Law No. 14,119/2021 establish the payment of environmental services, which includes conservation, maintenance, inventory and neutralization, aiming at generating carbon credits.

The Paris Agreement is changing the dynamics of the climate change-related business worldwide and in Brazil especially. Companies that adapt their operations and implement their own strategies to contribute to the reduction of greenhouse gas emissions will be ahead in terms of competitiveness. Such companies will not only easily comply with the future regulations on the matter, but also find new opportunities for their operations.

5.6 Fertilizers and Pesticides

Brazil has a broad set of regulations on all aspects of the research, production, packaging, labeling, destination, registration, transportation, storage, advertising, use, control and inspection of pesticides, as well as the components thereof and similar products.

Such activities are regulated by Law No. 7,802/1989 (Law of Pesticides), which establishes parameters for the control and supervision of the use of pesticides, the components thereof and similar products, including aspects of the reverse logistics of pesticides packaging. According to the law, the production, export, import, commercialization and use of pesticides, the components thereof and similar products are subject to prior registration with a federal agency, according to the guidelines and requirements of the federal agencies for the health, environment, and agriculture sectors. Research and experiments are also subject to temporary registration. Additionally, for the commercialization of pesticides and similar products in the national territory, proper labels and accompanying leaflets are required, containing indications for product identification, use instructions, information on potential hazards, and a recommendation for the user to read the label before using the product.

The states and the federal district have authority to legislate on the use, production, consumption, sale and storage of pesticides, the components thereof and similar products, as well as supervise the use, consumption, sale, storage and internal transportation. The municipalities may supplement legislation on the use and storage of pesticides, the components thereof and similar products.

The professionals, users or service providers, sellers, registrants, producers and employers are subject to liability for their conduct when they fail to comply with the legal duties to which they are subject. Liability may be at the administrative, civil, and criminal law levels for damages caused to people's health and the environment when the production, commercialization, use, transportation, and disposal of empty pesticide packaging, the components thereof and similar products do not comply with the relevant regulations.

The aforesaid Law No. 7,802/1989 was regulated by Federal Decree No. 4,074/2002, which details all activities related to the use and control of pesticides, establishes the infractions and administrative penalties for damages to health and the environment resulting from the misuse of the aforementioned products.

The Decree establishes the duties of the Ministry of Agriculture, Livestock, and Supply, Ministry of Health and Ministry of the Environment, and their respective sectors having registration authority. The Ministry of the Environment handles the registration of pesticides, technical products, pre-mixtures, and similar items used in aquatic environments, the protection of native forests and other ecosystems, while the Ministry of Health handles the registration of the same products used in urban and industrial environments and the Ministry of Agriculture those used in the production, storage, and processing of agricultural products, in planted forests and pastures, according to the guidelines and requirements of the Ministry of Health and of the Ministry of the Environment.

Regarding the advertising of pesticides, the Brazilian Constitution also established that this is subject to legal restrictions and also it shall contain, whenever necessary, a warning as to the harmful effects of its use. In this same sense, Law No. 9,294/1996 and its regulation (Federal Decree No. 2,018/96) establish that the

advertising of pesticides shall be restricted to programs and publications directed to farmers and ranchers, containing a complete explanation on their application, precautions in the applying, consumption or use, and establish infractions and administrative sanctions for non-compliance.

Law No. 6,894/1980 provides on the inspection and supervision of the production and sale of fertilizers, correctives, inoculants, stimulants or biofertilizers, remineralizers and substrates for plants used in agriculture. This law determines the registration of the producers and sellers of these products before the relevant authorities. This is regulated by Federal Decree No. 4,954/2004 which provides on the inspection and supervision of the production and sale of fertilizers, correctives, inoculants or biofertilizers, remineralizers and substrates for plants used in agriculture, and detail the rules on product registration, storage, packaging, labeling and sale.

Furthermore, Law No. 12,794/2013 establishes the Special Incentive System for the Development of the Fertilizer Industry Infrastructure (FII), which covers tax benefits for those who qualify under the system, to encourage regulated activity in the production and sale of the aforementioned products.

Similarly, currently in Brazil manufacturers, importers, distributors, and sellers of pesticide and fertilizer packaging are also subject to the obligations of adopting a reverse logistics system, as established by the Brazilian National Solid Waste Policy (Law No. 12,305/2010). In the case of pesticides, Law No. 9,974/2000 further provides that, in addition to the environmentally appropriate final disposal of the packaging, the packaging must be cleaned before it is returned to the producers and sellers of the pesticides. CONAMA Resolution No. 465/2014 also established the rules for the environmental licensing of the facilities involved in the receipt and final disposal of the pesticide packaging and similar items, with the applicable requirements for preventing environmental damage.

Therefore, the manufacturers, resellers as well as the users of pesticides and fertilizers are currently responsible for the final disposal and cleaning of used packaging. In the event of failure to comply with these obligations, they may be subject to the penalties established in Law No. 9,605/1998 (Environmental Crimes Law) and Federal Decree No. 6,504/2008 (provides on the administrative infractions to the environment and penalization).

In addition to the legal requirements, reverse logistics policies have been adopted by non-governmental entities as well. One of the main examples of such initiatives is the creation of the National Institute for Processing of Empty Packages (Instituto Nacional de Processamento de Embalagens Vazias or INPEV), a non-profit entity engaged in the handling packages of phytosanitary products by providing instructions to the industry and offering communication channels with the farmers. INPEV is organized and maintained by the industries that manufacture fertilizers and pesticides. According to its online database, INPEV promoted the environmental management of a total of 707,610 tons of packages between 2002 and 2023.

Moreover, Brazil incorporated the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade through Legislative Decree No. 197/2004 and Federal Decree No. 5,360/2005. State and municipal legislation establish additional and specific requirements, such as those concerning reverse logistics of pesticide packaging.

Finally, Bill No. 6,299/2002 is currently being discussed before the National Congress, proposing substantial changes to the pesticides regulations in Brazil. Generally, this bill addresses all activities related to the production and sale of pesticides, with the cancellation of the current provisions, new denominations for the activity and changes in the registration procedure. The bill was approved in the House of Representatives and is awaiting review by the Federal Senate.

Contracts

6 Contracts

6.1 General Provisions

In Brazil, agribusiness contractual relationships are regulated by Law No. 4,504 of 30 November 1964 (Land Statute) and Law No. 4,947 of 6 April 1966, as amended and regulated by Decree No. 59,566 of 14 November 1966, and other ancillary legislation (collectively, Agribusiness Legislation). The Brazilian Civil Code also applies, on a secondary basis, as well as other specific regulations.

Agribusiness Legislation establishes two typical contracts: the Rural Lease Agreement (arrendamento) and the Rural Partnership Agreement (parceria), which are agreed upon by the parties in writing or verbally.

Brazilian law establishes that the main purpose of these agreements is the assignment of a rural property[82] to the lessee or to the partner for rural exploitation, livestock breeding or agro-industrial purposes.

Law No. 5,868 of 12 December 1972 introduced the National Rural Registry System (Sistema Nacional de Cadastro Rural or SNCR), which consists of obtaining and maintaining four registries, namely: (i) the rural property registry; (ii) the registry of owners and holders of possession rights of rural properties; (iii) the rural lessees and rural partners registry; (iv) the public lands registry; and (v) national registry of public forests. This system establishes that the owner or the holder of the possession rights or use domain of a rural real estate property used for agribusiness purposes must be registered in the SNCR, under the penalty of taxation at the maximum rates, plus fines and other legal penalties.[83]

The National Institute for Colonization and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária or INCRA), is the agency that issues the Rural Property Enrollment Certificate (CCIR) and the Rural Lessee and the Rural Partner Certificates, which are valid for enrollment purposes only and do not evidence ownership or other similar rights.[84]

It is important to emphasize that most of the Agribusiness Legislation was created in the 1960s. Throughout the years rural economic development has led to technological innovations and globalization of commerce, entailing atypical agreements that are not regulated by specific legislation, and that play an essential role in the formal regulation of agribusiness relations, such as, for example: (i) Agricultural or Livestock Breeding Monitoring Agreement (Contrato de Monitoramento Agrícola ou Pecuário); (ii) Vertical Integration Agreement (Contrato de Integração Vertical); and (iii) Pasturing Agreement (Contrato de Pastoreio). Nevertheless, in such circumstances each type of contractual relation should be analyzed as the case may be.

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[82] Article 4, I of Law No. 4504 of 30 November 1964, defines rural real property as "rustic continuous real property regardless of its location for the purposes of rural extractive exploitation, cattle raising or agribusiness by means of public appreciation plans or private policy." Having said this, we deem that property shall be considered rural property according to the activities developed therein, regardless of where it is located.
[83] Article 2, §§ 1º and 2º of Law No. 5.868/72.
[84] Article 3 and sole paragraph of Law No. 5.868/72.

6.2 Rural Lease and Rural Partnership Agreements

The main purpose of Rural Lease and Rural Partnership Agreements is to convey possession of a rural property[85] for the exploitation of agricultural, livestock breeding, agro-industrial, extractive or mixed activities, upon payment of a rent (in the case of the Rural Lease Agreement) or apportioning of risks (in the case of the Rural Partnership Agreement).

6.2.1 Rural Lease Agreements

Under the Rural Lease Agreement the lessor grants to the lessee the rights of use and fruition of the rural property upon the payment of a rent amount, subject to the limitations established in Decree No. 59,566 of 14 November 1966, annually adjusted for inflation at the official index rate published by the National Council of Economics (Conselho Nacional de Economia).

The lease amount shall be established in a fixed amount, but cannot be based on the fruits or products or its cash equivalent. However, it may be agreed that the rent shall be paid in cash or in the fruits of the lease at market price, but never lower than the official minimum price.

The term of the Rural Lease Agreement may be predetermined or indefinite. In the predetermined term the lease lawfully expires upon the harvest of the fruits produced in the rural property and may be automatically renewed, unless either party notifies the other otherwise, provided that in the events and within the terms established in the law. If the term of the lease agreement is indefinite, the Agribusiness Legislation establishes, as a general rule that the term of the rural lease shall be at least three years.

Furthermore, depending on the type of activity that is carried out in the rural property, the law establishes the following minimum terms of duration: (i) three years in the case of temporary agricultural exploitation, medium or small-scale cattle breeding; (ii) five years in the case of permanent agricultural exploitation, large-scale cattle breeding or extraction of animal raw material; and (iii) seven years in the case of forest exploitation.

As concerns the renewal of the Lease Agreement, in the event that the lessor or the holder of possession does not intend to directly exploit the rural property, upon the expiration of the term of the lease agreement the lessee shall have the right of first refusal to renew the agreement in equal conditions with third parties, and for such purposes the lessor shall plainly notify the lessee at least six months in advance of the lease expiration, regarding the existing proposals; In the absence of such plain notification, the lease shall be considered automatically renewed, provided that in the following 30 days the lessor does not desist from the renewal or submits a new proposal, upon plain registration of the lessor's statements with the relevant public registry of deeds and documents, as established in Article 95, IV of Law 4,504/64, as amended.

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[85] Article 4, I, Law No. 4,504 of 30 November 1964, defines rural real property as "rustic continuous real property regardless of its location for the purposes of extractive exploitation of agriculture, cattle raising or agro-industrial by means of public appreciation plans or private policy." Having said this, we deem that real property shall be considered rural real property according to the activities developed therein, regardless of where it is located.

Subject to the legal requirements, the lessee shall be entitled to the right of first refusal to acquire the leased property.[86]

Rural Partnership Agreements

Under the Rural Partnership Agreement the owner or the holder of possession rights warrants to the partner, for a predetermined or indefinite period, the right to use the property, wholly or partially, jointly or not with its betterments and installations for specific purposes of agriculture, livestock breeding, agro-industrial activity and similar exploitation , with the apportioning of one or more of the following risks: (i) fortuitous and force majeure event that affects the business; (ii) variation in the price of the fruits resulting from the exploitation of the business; and (iii) receipt of the products and profits in the proportion agreed upon between the parties in the agreement, subject to the owner's quotas , which shall not exceed[87]:

a) 20% when the owner's quotas concur solely with bare land;

b) 25% when the owner's quotas concur with prepared land;

c) 30% when the owner's quotas concur with prepared land and housing;

d) 40% when the owner's quotas concurs with the basic betterments, consisting of residential housing, sheds, cattle bathroom, fences, ditches or pens, as the case may be

e) 50% when the owner's quotas concur with prepared land and the basic betterments listed in paragraph d) above, in addition to the supplying of agricultural machinery and equipment used to meet the cultivation needs, seeds and ploughing animals; and in the case of livestock breeding partnership, with breeding animals at a rate of more than 50% (one-half) of the total herd involved in the partnership;

f) 75% in the zones of ultra extensive livestock breeding in which the breeding animals are in a proportion of more than 25% of the herd and when the parties adopt milk sharing and agree a minimum 5% commission per animal sold

In other events not listed above, the owner's additional quota shall be established based on a maximum 10% of the amounts of the betterments or goods provided to the partner.

The partnership may be agreed for a predetermined or indefinite term. In the latter case, the law establishes that the agreement shall be considered as having been agreed for a minimum term of three years.

In the event the owner or the holder of possession rights over the land does not intend to directly exploit it upon the expiration of the term of the Rural Partnership Agreement, the partner shall have the right of first refusal to execute a new agreement in equal conditions with third parties, according to Article 96, II of Law No. 4,504/64.

[86] Article 92, third paragraph of Law No. 4,504/1964.
[87] Law No. 11,443/2007.

6.2.2 Termination and Remedies

Articles 26 and 27 of Decree No. 59,566/66 establish the events of termination of the Rural Lease Agreement, which apply to the Rural Partnership Agreement. Among such events are the breach of contract and violation of environmental rules.

Upon the termination of the agreement, the lessee and the partner shall return the property and accessories to the lessor and owner of the land in the same conditions that they received it, less normal wear and tear.[88]

As established in Article 95, VIII of Law No. 4,504/64, upon termination of the agreement the lessee or the partner shall have the right to be compensated for the betterments that were necessary and useful, as well as for the optional improvements introduced in the land. The latter, however, shall only be compensated when authorized by the land owner.

In addition to the collection and recovery lawsuits, the lessor and the owner or the holder of the land are entitled to file a repossession lawsuit against the lessee and the partner in the event of contractual breach, according to Articles 32 and 34 of Decree No. 59.566/66.

6.3 Rural Property Surface Right

Brazilian law foresees the possibility of assigning surface rights, through which the owner assigns to a third party the right to use the surface of the property with the purpose of building or planting. In the event the assignee uses the surface for purposes other than those agreed between the parties, the assignment shall be automatically terminated.

The assignee must pay all related expenses and taxes that apply to the property while the assignment of rights is in effect.

The surface right may be transferred to third parties and in the event of death of the assignee, to its successors. In the event of sale of the property or the surface rights, the assignee or the owner, as the case may be, shall have the right of first refusal to purchase the property and/or the surface rights in equal conditions with third parties.

Upon the expiration of the term of assignment of the surface right, the owner shall be reinstated in the full ownership of the property, its buildings or plantations, without any indemnification being due to the assignee, unless the parties formally agreed otherwise.

[88] Article 40 of Decree No. 59,566/66.

Rural Credit

7 Rural Credit

For being an important sector for economic growth, agribusiness receives great attention in regard to financing and investment, both from private banks and governmental institutions.

7.1 The National Rural Credit System

Based on Article 187, I of the Brazilian Constitution, the National Rural Credit System (Sistema Nacional de Crédito Rural or SNCR) was introduced by Law No. 4,829 of 5 November 1965, to provide to the rural sector the financial resources needed to:

- ensure the increase of rural production and productivity, the regularity of domestic supply, especially of foods and to reduce regional discrepancies;
- eliminate the distortions that affect the performance of the economic and social roles of agriculture;
- protect the environment, ensure its rational use and stimulate the recovery of natural resources;
- promote and stimulate the development of agricultural science and technology, public and private, especially those focused on the use of domestic production factors;
- stimulate the process of agro-industrialization with its production areas;
- promote the reliability of the input materials and services used in agriculture;
- ensure the quality of the agriculture products, their by-products and wastes that have economic value;
- promote fair competition between the companies engaged and protection in regard to unfair practices and the risks of exotic plagues and diseases in the country; and
- improve income and the quality of life in rural areas.[89]

From an economic perspective, rural credit is intended to support the cost of production and marketing of rural products as well as investment in the economic and social development of the sector.

The SNCR operates with government and private financial resources, the latter compulsorily directed to the system by the financial institutions.

7.2 Sustainable Productive Systems Support

Aiming to encourage sustainable productive systems, the government granted a 15% raise in the loans to producers that have properties that include a legal reserve area and a permanent preservation area as foreseen in the environmental

[89] Amendments made by Article 3 of Law No. 8,171 of 17 January 1991.

law, or to those who present a recovery plan approved by the Brazilian Environmental and Renewable Natural Resources Institute (IBAMA) or the corresponding state environmental agency.

In addition to the financing, some investment programs encourage sustainable production as per the following examples:

- The Program for Modernization of Agriculture and Conservation of Natural Resources (MODERAGRO) finances projects to modernize and expand productivity in the agricultural sectors and for actions aimed at soil recovery and animal protection.
- The Program for Climate Change Adaptation and Low Carbon Emission in Agriculture (ABC+ Program) finances investments that contribute to reduce environmental impacts caused by agricultural activities.

7.3 Main Financing Programs

Provided below is a list of the main financing programs administrated by the Brazilian National Economic & Social Development Bank (BNDES) and extended by the federal government:

Name	Purpose
ABC+ PROGRAM	Program for Climate Change Adaptation and Low Carbon Emission in Agriculture/Livestock Breeding
MODERAGRO	Program for Modernization of Agriculture and Conservation of Natural Resources
MODERFROTA	Program for the Modernization of the Fleet of Tractors and Implements Associated with Harvesters
PROIRRIGA	Program for Financing to Irrigated Agriculture and Protected Cultivation
PROCAP-AGRO	Program for Capitalization of Credit Cooperatives
PRODECOOP	Program for Cooperative Development for Aggregation of Value to the Livestock Production

7.4 Important Credit Lines for the Sector

Provided below is a list of some of the main credit lines for the agribusiness sector extended by Brazilian banks:

Bank	Title	Purpose
BNDES / Government	Prorenova	Financing to increase sugar cane production
	Cerealistas	Investment in civil construction and in the acquisition of the machinery and equipment

Bank	Title	Purpose
		needed to build warehouses and expand grain storage capacity.
	Rural Credit	Support for agricultural/livestock activities, including fishing, aquaculture, and forestry production, as well as agro-industrial activities, by extending loans for both funding and investment, for both investment projects and the separate acquisition of machinery and equipment.
	FCO Rural	Credit line for the financing of fixed and semi-fixed investments, of funds associated with projects limited to BRL10 million per beneficiary, for livestock activities in the Mid-West region
Banco do Brasil / government	Crédito Agroindustrial	Commercialization, processing of industrialization of livestock products acquired directly from rural producers or their cooperatives, and of raw materials directly used in the livestock activity
	LEC – Special Credit Line for Commercialization	Finance the storage of products of own production for future sale in better market conditions, or the storage of products acquired by companies comprised of rural producers and their cooperatives, of the following products: certain types of coffee, apple, peach, honey, wool and manioc starch
	Rural Credit - Agriculture Funding	Its main purpose is to cover the expenses of the permanent or temporary crop, financing of the works, soil preparation, seeds, fertilizers, maintenance, for the harvest.
Private Banks	Rural Credit – Livestock Funding	Financing of goods and services associated with the maintenance of livestock, such as: mineral salt acquisition, foods, medicines, pastures and workers
	Rural Credit – Agriculture Investment	Acquisition of goods or supplying of services that endure for more than one productive cycle
	Rural Credit – Livestock Investment	For the acquisition of goods or services that endure for more than one productive cycle

Securities

8 Securities

8.1 Certificates Related to the National Rural Credit System

The public financing policy regarding agribusiness, implemented through the National Rural Credit System (SNCR), was developed with governmental interventionism, specially through the rural certificates established in Decree Law No. 167 of 14 February 1967, such as: (i) Rural Pledged Note (Cédula Rural Pignoratícia); (ii) Rural Mortgage Note (Cédula Rural Hipotecária); (iii) Rural Pledged and Mortgage Note (Cédula Rural Pignoratícia e Hipotecária); and (iv) Rural Credit Note (Nota de Crédito Rural).

8.2 Certificates Related to the Financing of the Agribusiness by the Private Sector

The insufficiency of rural credit from the public sector required the development and implementation of a new agricultural policy based on agribusiness financing mechanisms provided by the private sector. Therefore, as part of this new financing model, Law No. 8,929 was enacted on 22 August 1994, and established the Rural Product Note (Cédula de Produto Rural or CPR), which may be considered the basic instrument that sustains the chain of production and the agribusiness private financing structure. The CPR is a certificate that represents a commitment to deliver rural products issued by rural producers and their respective associations and cooperatives. In 2001, pursuant to the amendments introduced by Law No. 10,200 of 14 February 2001, the financial liquidation of the CPR was allowed through the Financial Rural Product Note (Cédula de Produto Rural Financeira or CPR-F).

The introduction of CPRs and the CPR-F enabled the extending of credit through the capital and financial markets, which foster the development of a modern and competitive agriculture, that is, same stimulate private financing to the agribusiness sector, especially by international investors, private companies and banks.

In addition to the CPR and CPR-F, since 2004 the agribusiness sector comprises the following certificates: (i) Certificate of Agribusiness Deposit (Certificado de Depósito Agropecuário or CDA); (ii) the Agribusiness Warrant (Warrant Agropecuário or WA); (iii) the Certificate of Agribusiness Credit Rights (Certificado de Direitos Creditórios do Agronegócio or CDCA); (iv) the Agribusiness Letter of Credit (Letra de Crédito do Agronegócio or LCA); and (v) the Certificate of Agribusiness Receivables (Certificado de Recebíveis do Agronegócio or CRA).

The CDA is a credit instrument that represents a commitment to deliver a farming product stored in a warehouse, according to Law No. 9,973 of 29 May 2000. The WA is a credit instrument that represents a cash payment, granting a pledge right over the corresponding CDA and over the product stated in the certificate. These certificates are issued at the request of the depositor, always jointly acquiring autonomy and circularity, although both may be negotiated and used by producers to secure credit operations and consist in an instrument fit for extrajudicial enforcement. Both are classified as credit instruments issued

simultaneously, where the CDA corresponds to an obligation to give (a good) at a certain instance and the WA represents a cash payment obligation, characterizing an *in rem* guarantee over the deposited product.

The CDCA is a nominal credit instrument, freely negotiable, that represents a cash payment commitment and an instrument fit for extrajudicial enforcement. It is issued exclusively by cooperatives and other legal entities engaged in the commercialization, conversion or industrialization of agricultural products and raw materials or machines and other rural inputs used in agricultural production.

The LCA is a nominal credit instrument, freely negotiable, issued exclusively by financial institutions and it represents a cash payment commitment and characterizes an instrument fit for extrajudicial enforcement.

The CRA is a nominal credit instrument, freely negotiable, issued exclusively by companies that securitize agribusiness credit rights, it represents a cash payment commitment and characterizes an instrument fit for extrajudicial enforcement.

On 7 April 2020, Law No. 13.986/2020, known as the Agribusiness Law, was enacted. This was the first major regulatory milestone for financing Brazilian agribusiness and brought significant changes to its system, enabling its expansion through the capital market, including attraction of foreign investment.

Among the main innovations of the Agribusiness Law, are the introduction of the Solidary Guarantor Fund (Fundo Garantidor Solidário or FGS) and the Rural Property in Affectation (Propriedade Rural em Afetação or PRA).

The main objective of the FGS is to be used as a guarantee in any financial operation related to a rural business activity. When the Agribusiness Law was enacted, the FGS had to be comprised of at least two rural producers, the creditor and the guarantor, establishing minimum percentages of resource integration in the FGS by those who comprised it.

With the announcement of the new Agribusiness Law (Law No. 14.421/2022), these concepts were updated, and the creditor no longer comprises the FGS and the minimum percentages of resource integration ceased to exist.

The PRA provides to the rural owner the possibility of segregating its property, in its entirety or in one or more fractions, in order to offer it to secure credit operations, with the land, accessions and betterments to the property comprising the affected property – being excluded from the affected property crops, movable goods, and livestock and which may be freely used by the rural producer, including to offer it to secure other operations.

This allows the rural producer to offer fractions of its property to secure financings with different creditors, protecting the rural producer insofar as since only a fraction is offered as a guarantee, the rest of the property remains intact and clear of any restrictions.

In this regard, to enable various operations in the capital market, the Rural Real Estate Note (Cédula Imobiliária Rural or CIR) was introduced, consisting in an extrajudicial instrument fit for enforcement of a certain, liquid and enforceable debt, issued supported by the divided property (affected property). Additionally, the concepts of the Rural Product Note (CPR) were changed to enable the constitution of property in affectation through its issuance.

As of 2022, pursuant to the New Agribusiness Law, the activities that may be financed via CPR has been broadened, and it became possible to raise funds for environmental conservation and preservation through the Green CPR.

Aiming to attract foreign investment, the Agribusiness Law also allowed the issuance of the CRA and the CDCA with a clause for adjustment based on the variation in the exchange rate.

In addition, the Agribusiness Law established that the restrictions imposed by Law No. 5,709 of 7 October 1971 (which regulates the acquisition of rural real estate by a foreigner residing in Brazil or a foreign legal entity authorized to operate in Brazil), shall not apply (i) in the cases of providing a property guarantee; (ii) in the cases of receiving a property in the liquidation of a transaction with a legal entity, national or foreign, or a national legal entity in which foreign individuals or legal entities hold the majority of its capital stock and that reside or is domiciled abroad, through the provision of the property guarantee, payment in kind or any other form.

This plain change afforded greater legal safety to the investors, who could have their respective credits secured by rural properties, fostering the financing of agribusiness.

8.3 Investment Fund in the Agribusiness Production Chains (Fiagro)

In March 2021, Law No. 14,130/2021 broadened the possibility of investing in agribusiness through the introduction of Fiagro. This new type of investment fund, which adopts a structure similar to real estate investment funds, may be broken down into three categories, depending on the allocation of the assets raised: (i) Fiagro-FIDC, when it aims investment in agribusiness credit rights; (ii) Fiagro-FII, when it aims investment in agricultural real estate; (iii) Fiagro-FIP, when it aims at acquiring stakes in companies of the agricultural sector.

8.4 Issuance of the Certificates

The certificates related to agribusiness may be issued privately or publicly, except for the LCA, which may only be issued by a financial institution. The public issuance of such certificates is regulated by the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários or CVM).

The public issuance of certificates is currently regulated by CVM Resolution No. 160, with the possibility of an ordinary issuance proceeding (analyzed by the CVM) and an automatic proceeding (without the CVM analysis), depending on the public targeted by the offering. Furthermore, the issuance of CRAs is also subject to the rules established in CVM Resolution No. 60.

Finally, Fiagro is temporarily regulated by CVM Resolution No. 39, and other specific provisions may apply depending on the category of the Fiagro. Effective 03 March 2025, CVM Resolution No. 214 became a part of the regulatory milestone for investment funds in Brazil by adding Normative Annex VI to CVM Resolution No. 175 of 23 December 2022.

Labor Affairs

9 Labor Affairs

9.1 Introduction

Due to the peculiarities of the services rendered in the agribusiness sector, Brazilian law establishes special protection for the workers therein.

9.2 Definition of Rural Worker

A rural worker is an individual who, in a rural property or a rustic building, renders services of a non-sporadic nature to a rural employer, with subordination of the individual to the employer and upon the payment of a salary. Moreover, an individual hired by a rural employer may also be considered a rural worker.

9.3 Definition of Rural Employer

A rural employer is an individual or legal entity, owner or not of a rural land, that explores a rural activity on a permanent or temporary basis, directly or through agents, assisted by employees.

An individual or legal entity that, usually, in a professional aspect and on account of third parties, renders services of an agrarian nature through the use of another person's efforts may also be considered a rural employer. In addition, workers used in agro-industrial exploitation are also considered rural workers.

The following are considered agro-industrial exploitation activities:

(i) The initial treatment of raw products without transformation of their nature;

(ii) The processing, initial modification, preparation of agricultural and horticulture products and raw materials of animal or vegetable origin for subsequent sale or industrialization; and

(iii) The use of sub-products resulting from the initial modification.

9.4 Labor Rights of the Rural Worker

1. Minimum wage;
2. Eight-hour work day;
3. Break for rest and/or meal;
4. Additional pay for work at night;
5. Overtime pay;
6. Paid weekly day-off;
7. Job stability;
8. Prior notice of termination;
9. Vacation plus additional one-third payment;

10. Thirteenth salary or Christmas bonus; and

11. Worker Severance Fund (FGTS)

9.4.1 Minimum Wage

A worker is warranted the right to be paid at least one national minimum salary, applicable to both urban and rural workers. However, the minimum salary may be established by state legislation in an amount higher than the national minimum salary, being necessary to check whether it applies to rural workers. Moreover, the minimum wage may be established in a Collective Bargaining Agreement (Convenção Coletiva do Trabalho) that applies to the workers' class.

9.4.2 Eight-Hour Work Day

The rural worker shall start and end his/her daily work hours according to the usages and custom of each region, subject however to the daily limit of eight hours and 44 hours weekly.

9.4.3 Break for Rest and/or Meal

In regard to workers who have a daily work hours period of more than six hours, they are entitled to a break for rest or meal of at least one hour and a maximum of two hours. If the daily work hours is less than six hours, the break shall correspond to 15 minutes. The break shall not be computed in the daily work hours.

Between two work days, a minimum period of at least 11 consecutive hours for the worker's rest must be respected.

9.4.4 Additional Pay for Work at Night

In the case of work at night, the rural worker is entitled to additional pay at the rate of 25% applied over the regular daily hourly rate. The following periods are considered work at night:

(i) In agriculture activities: work labored between the 21st hour of a day and the 5th hour of the following day

(ii) In livestock activities: work labored between the 20th hour of a day and the 4th hour of the following day

Work at night is not allowed for workers aged under 18.

9.4.5 Overtime

According to the Brazilian Constitution, the overtime labored shall be added to the normal duration of the daily work hours, in a number that shall not ever exceed two hours per day, and provided that agreed in writing between the employer and the employee, or convened in a Collective Bargaining Agreement.

The overtime labored shall be paid with an increase of at least 50% over the regular daily work hour rate, being possible that the Collective Bargaining Agreement that applies to the worker's class establishes overtime pay at a rate higher than the 50% rate established in the Brazilian Constitution.

The overtime pay shall not be due if the Collective Bargaining Agreement establishes compensation of the overtime that was labored. This practice is known as "work hours bank".

The duration of the daily work hours may exceed the legal limit or agreed period when necessary to finish urgent work or due to a force majeure event. Under such circumstances, the overtime work may occur even if not foreseen in the labor agreement or Collective Bargaining Agreement, provided that previously informed to the Superintendent of Labor and Employment (Superintendência do Trabalho e Emprego) by at least 10 days and provided that the work hours do not exceed 12 daily hours.

Moreover, the daily work hours may exceed the legal limit or the agreed period of up to two hours, to compensate interruptions in the work hours due to accidental causes or force majeure, provided that the daily work hours does not exceed 10 hours. This extension may not exceed 45 days per annum and must be previously authorized by the relevant authority.

9.4.6 Paid Weekly Rest

The rural worker is entitled to a paid weekly rest period of at least 24 consecutive hours, preferably on Sundays and civil and religious holidays, according to local tradition.

9.4.7 Job Stability

Under certain circumstances employees are entitled to job stability. Brazilian labor law establishes some cases of temporary job stability and the Collective Bargaining Agreements often establish additional cases in which job stability is warranted. Thus, whether by virtue of the law or under a Collective Bargaining Agreement, employees cannot be dismissed without just cause.

Among the main situations of provisory job stability are:

Pregnant female employees. Pregnant female employees are warranted temporary job stability as of the date of acknowledgment of the pregnancy through to five months as of her child's birth. Please note that this period is usually longer in the Collective Bargaining Agreement.

Members of the Internal Commission for Prevention of Accidents (CIPA). CIPA members are entitled to temporary job stability as of the date of registration of their candidacy through to one year after their member term ends. The temporary job stability of the CIPA member is extended to their substitutes for up to one year as of the end of their member term.

Union representative. Union representatives are also entitled to job stability as of the date of registration of their candidacy through to one year after the end of their term of union representative.

Pre-Retirement Period. The applicable Collective Bargaining Agreement may establish job stability to employees near retirement (12 or 24 months preceding retirement, usually).

Military Service Recruitment. The employees recruited for military service to the Brazilian Army are entitled to a job stability of up to 30 days following their returning from military service.

Illness or Work Accident. Employees that are ill or suffered a work accident are entitled to job stability while their leave/social security benefits persist, and up to 12 months following their return to work. There is no maximum absence period due to illness or accident.

9.4.8 Prior Notice of Termination

In Brazil, the termination of a labor agreement without just cause must be preceded by a 30-day written notice. The employee that has been employed for more than one year at the same company are entitled to a prior notice proportional to the employment period, adding three days per year of employment (limited to a maximum of 90 days).

Given that sometimes the presence of the employee under prior notice may not be desirable or convenient, some employers prefer to indemnify the prior notice period and cease the employment immediately.

When an employee quits, he/she must provide to the employer a resignation letter at least 30 days in advance. In such 30-day period the employee continues working, except when: (a) the employer decides to cease the work and release the employee from working in the prior notice period or (b) the employee refuses to work in the prior notice period, in which case the employer shall be indemnified by the employee.

9.4.9 Vacation plus Additional One-Third Payment

The rural worker, similar to the urban worker, is entitled to a 30-day vacation per annum, accruing as vacation pay an additional one-third amount to his/her salary.

The fruition of the vacation must be granted during the year that follows the year in which the worker acquired the right to have a vacation. If the vacation is not granted in that proper period, the worker is entitled to receive, as indemnification, the amount due doubled up.

If the labor agreement is terminated before one year of employment is completed or if the employer dismisses the worker with just cause, the worker shall be entitled to a prorated vacation pay in regard to the incomplete part of the acquisition of the right to vacation period, at the rate of 1/12th per month labored.

9.4.10 Thirteenth Salary (or Christmas Bonus)

The rural worker is entitled, in the month of December of each year, to a Thirteenth Salary (or Christmas Bonus) corresponding to 1/12th of his/her December salary multiplied by the number of months labored in that respective year.

9.4.11 Worker's Severance Fund (FGTS)

According to the current Brazilian Constitution, the rural worker is entitled to indemnity in the event of being dismissed without just cause. Such indemnity is paid out from a fund of monthly contributions paid by the employer throughout the employment period, in an amount corresponding to 8% of the employee's salary.

When the employment is terminated, the employer shall pay an amount equal to 40% of the total amount in the employee's Severance Fund (FGTS) at the date of termination.

9.5 Intermittent Services

Intermittent services are those which, by their nature, must be labored in two or more distinct daily shifts, with a pause of at least 5 hours between the shifts.

In the case of the intermittent service, as long as the worker does not carry out distinct tasks, the pauses between the shifts are not computed.

The intermittent services must be recorded in the Worker's Employment and Social Security Booklet (Carteira de Trabalho e Previdência Social or CTPS).

9.6 Underaged Workers

Except in the case of an apprentice, who may be hired starting from the age of 14, all labor is prohibited to those under the age of 16.

Workers under the age of 16 hired as apprentices are prohibited from working in worksites deemed hazardous or unhealthy, as well as in night hours shifts or labor deemed arduous.

Additionally, an underage worker cannot work overtime, unless the overtime is compensated in the following day, respecting the limit of two hours daily and 44 hours weekly.

9.7 Housing Provided to the Rural Worker

The housing provided by the employer, as well as the goods for the subsistence of the employee and his/her family, are not considered salary, provided that this is expressly stipulated in the labor agreement (which must be signed by witnesses also) and informed to the respective Union that represents the rural worker's class.

The grant of housing to multiple families is not allowed.

The employee shall deoccupy the housing provided by the employer within 30 days after termination of the labor agreement. Furthermore, up to 20% of the employee's minimum salary may be deducted as compensation for the housing granted by the employer.

9.8 Labor Agreement

In addition to registration in the Worker's Employment and Social Security Booklet, the employer must maintain a written labor agreement, specifying all particulars of the employment, such as work hours, use of uniforms and protection equipment, presentation of medical certificates, meals provided and any other necessary clauses.

The labor agreement may be for a predetermined or indefinite term.

Among the labor agreements with rural employees for a predetermined term, the following may be mentioned:

(i) Harvest Agreement

The duration of a harvest agreement depends on seasonal variations of the agricultural activities, characterized as the tasks normally carried out during the period of preparation of the land for cultivation and harvest.

Upon the termination of the harvest agreement, the employee will be entitled to receive, as indemnity for the period labored, an amount equal to one-twelfth of the monthly salary per month labored.

(ii) Short-Term Agreement

A rural producer may hire a rural worker for a short period to carry out work of a temporary nature.

This type of labor agreement cannot be adopted by companies of rural producers and agro industries.

A short-term labor agreement may have a term of at maximum two months of an annual period. If it exceeds such period, it shall be automatically deemed an agreement contract for an indefinite term of duration.

There are two forms to formally establish a short-term labor agreement:

(i) Annotation in the Worker's Employment and Social Security Booklet and in the employer's registry of workers; or

(ii) Written labor agreement, in identical copies for both parties.

The worker's pay shall be calculated on a daily basis, but the payment may be paid monthly directly to the worker, upon a respective receipt thereof.

9.9 Secondary Culture

The subsidiary or intercropping planting (secondary culture) under the worker's responsibility, when also of interest to the employer, shall be agreed on separately in the labor agreement.

In these cases a rural partnership agreement shall be adopted, in which the parties agree to grant, for a predetermined period or not, the use of rural property, which may include or not betterments and other goods, or provide animals for breeding or for extraction of raw material of animal or vegetable origin, through the sharing of risks borne by the rural company and its benefits, the products or the revenue generated, in the proportions stipulated therein.

9.10 Elementary School

An employer that has working for the employer, within the employer's property, more than 50 workers of any type, along with their respective families, is required to have and maintain in activity an elementary school, free of charge, for the workers' minor-aged children.

9.11 Statute of Limitations

The worker is entitled to claim his labor rights before the Labor Courts within a five year statute of limitations, provided that such claim is filed within two years as of the termination of the labor agreement. The foregoing statute of limitations does not apply to the worker aged less than 18.

9.12 Outsourcing

In 2017 Law No. 13,429 was enacted to allow outsourcing at all stages of the production process, i.e. in both the core and non-core activities.

Thus, outsourcing or any other form of division of labor between different legal entities is legal, irrespective of the line of business of the companies involved,

persisting joint and several liability of the contracting company with the contracted company.

- No changes occurred in the labor rules regarding the recognition of binding employment. The law adopts a relative presumption of the non-existence of binding employment given that evidence to the contrary is acceptable.
- The outsourced or independent worker continues to vest the right to claim labor rights before the Labor Courts.
- Primacy of the Facts: binding employment continues to be characterized upon the fulfillment de facto of the requirements established by the law for its characterization (especially subordination), irrespective of the wording of the labor agreement that the parties signed.

9.13 Labor Inspection

In Brazil, the Ministry of Labor and Employment has regional offices (Superintendências Regionais do Trabalho e Emprego or SRTE) responsible for inspecting companies and workplaces to check abidance by the labor laws, particularly those concerning safety and health conditions in the labor, registration of the work hours, excessive overtime laboring, payment of salary and benefits, and the payments to the Worker's Severance Fund (Fundo de Garantia Por Tempo de Serviço or FGTS).

9.14 Shutdown

If during the inspections conducted by the regional offices of the Ministry of Labor and Employment the labor inspectors find that the work conditions may be harmful to the employees' health or may pose a risk to their lives, the company's facility or activities may be entirely or partially shutdown. In such a case, the company's activities may only resume after a re-inspection attests full compliance with the health and safety at the workplace regulations.

9.15 Health, Safety and the Environment

In Brazil an employee may be entitled to additional pay based on his/her work activities, such as, for example:

(a) Additional pay for work at night (adicional noturno): When the employee works between 10:00 p.m. and 5:00 a.m. such employee is entitled to this additional pay. Brazilian labor law establishes that such additional pay shall correspond to at least 20%. In rural activities (farming), work at night is considered to be from 9:00 p.m. to 5:00 a.m., and in livestock activities from 8:00 p.m. to 4:00 a. m.

(b) Additional payment for Hazardous Work conditions (adicional de periculosidade): Brazilian labor law establishes that this additional pay is due to workers that are exposed to hazardous conditions in their work activities, such as electricity, explosives and inflammable products. This additional pay shall correspond to 30% of the employee's monthly salary.

(c) Additional pay for unhealthy work conditions (adicional de insalubridade): Brazilian labor law establishes that this additional pay is due to workers exposed to unhealthy work conditions. This additional pay ranges from 10%

to 40% of the minimum salary, depending on the exposure of the worker. In this regard the workplace that is: exposed to physical agents (such as high noise level, vibration, abnormal pressure, extreme temperatures), chemicals agents (such as handling of chemicals whose toxicological and physicochemical properties pose harmful risks, such as agricultural pesticides), or biological agents (such as contact with microorganisms capable of entailing any type of infection, disease, injury or intoxication of the human body, such as the handling of animal excrement), among others, is deemed unhealthy.

9.16 Personal Safety Equipment (Equipamento de Proteção Individual or EPI)

The employer is required to provide to the employees, free of charge, personal safety equipment appropriate to the risk exposed and in perfect conservation conditions, whenever the common measures are insufficient to assure complete protection against the risks of accidents and affecting the workers' health. In other words, the employer shall provide the proper equipment based on the risks of the activity and workplace.

In the agricultural sector, to avoid the exposure of the workers to physical, chemical and biological agents, masks, gloves, boots, helmets, sunscreen, face and hands products, hoods and aprons are commonly provided.

9.17 Work in Open Environment

When the work is labored in an open environment, the rules established in Regulatory Rule NR No. 21 of the Ministry of Labor and Employment must be met. Firstly, shelter to protect workers from bad weather must be provided. Additionally, the special measures to protect workers against excessive sunlight, heat, cold temperature, moisture and wind must be adopted.

9.18 Sanitary Conditions at the Workplace

Regulatory Rule NR No. 24 of the Ministry of Labor and Employment establishes rules for sanitary and comfort conditions at the workplace, such as bathrooms, lockers and cafeterias.

9.19 Degrading Work / Labor in Slavery-Like Conditions / Child Labor

Brazil forbids degrading work, labor in slavery-like conditions and child labor, as expressly established in the Brazilian Constitution, Labor Code (CLT), Criminal Code and other specific laws.

In this regard, the relevant authorities (Authorities of the Ministry of Labor and Employment and the Labor District Attorney or MPT) have increased inspections and improved the investigation procedures (at the administrative and judicial levels). These two authorities usually act in coordination with other entities such as the police, the army, associations and non-governmental organizations.

Furthermore, the Ministry of Labor and Employment has a "black list" of companies where the labor authorities found workers in slavery-like conditions. Such companies received several sanctions, including blocking access to bank financing.

More recently, the inspection of rural properties focused on investigating child labor and/or similar to slavery has become one of the main priorities of the Labor District Attorney (MPT).

Real Estate Peculiarities

10 Real Estate Peculiarities

10.1 Social Role of the Rural Property

In Brazil the rights over real estate property are basically regulated by the Brazilian Civil Code, more specifically Articles 1228 to 1259, establishing the legal and constitutional right of the property's owner to freely use, dispose of and fruition of the property or the respective property right. Pursuant to the Brazilian Constitution and the Brazilian Civil Code, the property rights in general, in rural areas, became subordinated to another constitutional principle, namely the "social role of the property" (Articles 5/XXIII and 186 of the Brazilian Constitution). Generally, this principle requires (i) the appropriate and rational use of the property; (ii) abidance by the environmental preservation rules; and (iii) respect to the labor rights and social welfare. Meeting these requirements, which, in a few words, are intended to prevent real estate speculation and stimulate a better allocation of the production factor, the real estate intended to be used in rural activities obtains full governmental protection. On the other hand, the property that does not meet its social role may be included in the Agrarian Reform Program of the federal government, which, in accordance with Article 184 of the Brazilian Constitution, may expropriate lands that are deemed unproductive, upon prior payment of a fair price, in agrarian debt bonds issued by the government and redeemable in up to 20 years.

10.2 Right of First Refusal

The exploitation of rural real estate (this being basically property that is used in agricultural production or pasture[90]) is also regulated by Law No. 4,504/1964 a.k.a. the Land Statute (Estatuto da Terra, as already mentioned above), which, among other rules regulates the rural lease agreements and the agricultural, livestock and agro industrial partnerships. The Land Statute establishes clauses and conditions that must be included in such agreements, such as, for example, a minimum term of duration, preferential right in the renewal thereof and right to compensation for improvements that were introduced in the property upon the agreement's termination. In the case of leasing, the lessee also is entitled to preference to acquire the property over third parties (Article 92, Paragraph 3), in which case the lessor must notify lessee in up to 30 days, for lessee to exercise such right or not, in such period. If lessor fails to notify, lessee may cancel the sale to the third party and acquire the property, depositing the price in up to six months as of the registration of the transaction with the Public Real Estate Registry.

10.3 Transfer of Title

In Brazilian law real estate is transferred necessarily through a deed recorded by a public registry of deeds and documents or a court decision and shall only generate effects in regard to third parties (*erga omnes* effect) when the public

[90] According to Article 4 of Law No. 4,504/64, "Rural Real Estate" is considered the rustic building, of continuous area, whichever its location, destined to agricultural extracting exploration, livestock or agro industrial, be it through public recovery plans, or through private initiative.

deed is filed with the Public Real Estate Registry that has jurisdiction over the location where the property is registered (Article 1,245 of the Civil Code).

10.4 Acquisition of Rural Real Estate by Foreigners

The acquisition of a rural real estate by a foreign individual or legal entity authorized to operate in Brazil is regulated by Law No. 5,709 of 7 October 1971. The law establishes some restrictions in regard to the area where the real estate is located, such as, for example, a national security area.

Foreign companies, for example, may only acquire rural lands to implement agricultural, livestock activities, an industrial activity or colonization projects, previously approved by the Ministry of Agriculture, and, in the case of industrial activities, by the Ministry of Development, Industry and Commerce.

The same restrictions apply to the cases of leasing of a rural real estate by a foreigner. In both cases (purchase or leasing), the individuals must prove their status of permanent resident in Brazil. The legal entities are required to present their operation license and special authorization.

In August 2010 the Federal General Attorney (Advocacia Geral da União or AGU) issued its legal opinion CGU/AGU No. 01/2008 – RVJ, attached to Legal Opinion LA No. 1/2010) ("Legal Opinion"), interpreting the aforementioned law. The AGU found that all of the restrictions that are imposed on foreign companies and individuals in regard to the acquisition and leasing of rural land in Brazil also apply to Brazilian companies that are controlled by foreign entities.

That legal opinion is opposite to the legal opinions that preceded it. Legal opinions issued in 1994 and 1998 sustained that the provision of the Law No. 5.709/1971 that extended such restrictions to companies controlled by foreign entities were cancelled by the Brazilian Constitution. The AGU Legal Opinion finds that the same aforesaid provision does not conflict with the Brazilian Constitution, and, therefore, the restrictions imposed on foreign entities also apply to Brazilian companies controlled by foreign entities.

Such limitations means that without complex proceedings to obtain the applicable authorizations, foreigners and foreign companies controlled by foreign capital cannot (i) acquire more than 25% of the real estate in the same municipality; and (ii) acquire or lease rural lands that are larger than 100 modules (which may represent up to 10,000 hectares depending on the region, considering also the restrictions established in Law No. 8.629/1993).

This new interpretation applies to the rural lands that were acquired after 23 August 2010, which is the date on which the Legal Opinion was published in the Brazilian Official Gazette). In regard to rural real estates that were acquired before that date the former interpretation is still valid. Therefore, Brazilian companies controlled by foreign capital that acquired rural lands before the aforesaid date are not subject to the restrictions that were introduced by the new interpretation.

Some claims are currently pending before the Brazilian courts challenging the Legal Opinion.

One of the main allegations in such claims opposing the Legal Opinion is that all companies that are organized under Brazilian law, that are headquartered in Brazil and have their articles of incorporation registered with the Brazilian authorities, are Brazilian companies. On the other hand, companies organized

under foreign law, holding only a permission to operate in Brazil, are foreign companies. Such companies operate under a different system, organized simply as offices and/or branches in Brazil.

Summarizing, insofar as the constitutional provisions do not distinguish companies in regard to the nationality of the entities that control them, a sub-constitutional provision cannot do so. Hence, based on this hierarchy of the laws and regulations, Brazilian lower court judges and appeals courts have been granting injunctions to suspend the effects of the Legal Opinion. Nevertheless, there is still legal uncertainty regarding the effectiveness and validity of such decisions.

After a ruling of the São Paulo State Court of Appeals (TJSP) granted a claim of a Brazilian company controlled by foreign capital in this regard, the Judiciary Corrections Department of the State of São Paulo (Corregedoria de Justiça) issued Legal Opinion No. 461/2012, opposing AGU's Legal Opinion of 2020, which led to a lawsuit filed by the Federal Government and the National Institute of Agrarian Reform (INCRA) before the Supreme Court (STF) opposing Legal Opinion No. 461/2012. The injunction to suspend the enforceability of Legal Opinion No. 461/2012 was denied by Justice Minister Marco Aurélio de Melo in July 2014. In May 2023, pursuant to a deadlock in the vote, the Plenary of the Supreme Court did not uphold Justice Minister André Mendonça's decision to suspend all lawsuits pending before the courts involving the purchase of rural real estate by Brazilian companies in which foreigners hold a majority stake.

The Federal Prosecutor (MPF) is also concerned with the theme. In August 2014 the Federal Prosecutor filed an administrative request to the National Judiciary Corrections Dept or CNJ, for the CNJ to order all of the judiciary corrections departments to recognize and apply the restrictions imposed by the sub-constitutional laws and determine the creation of a special system for registration of rural leasing agreements entered by foreigners or by Brazilian companies controlled by foreign capital.

The Brazilian Senate is currently discussing some changes in the law through which the issues raised by the AGU would be settled. Most of the Brazilian parliament intends to create an environment that is favorable for Brazil to be more attractive and competitive.

Taxation

11 Taxation

Brazilian tax law establishes certain tax benefits/incentives for the companies and individuals engaged in agribusiness. These benefits are at both the federal and state levels and shall be addressed separately hereunder for a better comprehension.

As a rule, the tax incentives that are offered apply to the *activities* or *products* rather than *the company*. This means, for example, that if a company has two lines of business, one of which is agribusiness-related, only the revenues generated by the agribusiness is eligible for tax incentives.

For this reason, companies in this situation must keep the records and financial statements of their different lines of business duly separated. In some situations, the separation of the agribusiness assets and activities from other activities through a corporate reorganization can be an important tool to ensure eligibility and fruition of the existing tax benefits.

11.1 Definition of Agribusiness for Tax Purposes

Agribusiness is a broad concept and is defined by Law No. 8,023/90 (Article 2, I to V), as amended by Article 17 of Law No. 9,250/95, and Law No. 9,430/96 (Article 59), covering the following activities:

(i) Agriculture

(ii) Livestock

(iii) Plant and animal extraction and exploitation

(iv) Exploitation of apiculture, poultry farming, rabbit farming, pig farming, sericulture, fish farming and other animal cultures

(v) Transformation of products derived from rural activities without change to the original content and features of the products (dairy products, soybean processing, corn processing, coal processing, etc.)

(vi) Forest cultivation for the sale, consumption or industrialization of timber

Therefore, if a company is engaged in one of the foregoing activities, it is, in principle, eligible for certain tax incentives, such as tax exemptions, tax credits, and lower tax rates.

On the other hand, the concept of agribusiness **does not encompass** the following activities (among others):

(i) Production of alcoholic beverages; special oils, rice processed using industrial machines, wine produced from grapes or fruits

(ii) Processing or manufacturing of raw fish

(iii) Income originating from rental or leasing of agricultural machinery

(iv) Income generated from the sale of metals extracted from rural properties

(v) Financial revenues generated from financial investments carried out between two cycles of production

(vi) Revenues generated from rural tourism (including farm resorts)

11.2 Tax Benefits Offered

11.2.1 Federal Taxes

11.2.1.1 Corporate Income Tax (IRPJ) and Social Contribution on Profits (CSSL)

As a general rule, companies engaged in agribusiness activities are subject to the same rules for calculating and collecting Corporate Income Tax (IRPJ) and the Social Contribution on Profits (CSSL) that apply to companies engaged in other sectors of the economy.

The IRPJ is calculated by applying a 15% rate on the adjusted net profit, plus an additional 10% on the annual net profit that exceeds BRL 240,000. The CSLL is calculated at a rate of 9%.

There are two systems that taxpayers can choose to calculate IRPJ and CSLL. The first is the Real Profit Lucro Real) system, and according to Law No. 9,430/96, taxpayers may choose to calculate the IRPJ and CSLL quarterly or annually. When calculated quarterly, the taxes shall also be collected quarterly. When IRPJ and CSLL are calculated annually, the taxpayers must advance monthly payments calculated based on an estimated income that, at the end of the fiscal year, shall be subject to a final calculation based on their actual annual revenues.

For most companies, the estimated revenues corresponds to 8% of the total monthly gross revenues, plus capital gains and other revenues, as well as the positive results obtained by the company. This percentage ranges from 8% to 32% depending on the activity in which the taxpayer is engaged.

Alternatively to the Real Profit system, the taxpayer may elect to adopt the so-called Presumed Profit (Lucro Presumido) system, in which IRPJ and CSLL are calculated quarterly, and the tax base corresponds to the estimated percentages stated above. In regard to the non-operational revenues, these amounts are fully taxed at the IRPJ and CSLL rates, without applying the estimated presumed profit percentage. If the taxpayer that elected the Presumed Profit system obtains revenues that exceed the legal cap of BRL 78,000,000 in a given fiscal year, or declares profits or capital gains originating from abroad, this taxpayer can no longer adopt this system and must adopt the Real Profit system.

The IRPJ and CSSL tax benefits applicable to companies that are engaged in agribusiness activities are as follows:

1. Non-applying of the 30% cap to offset Operating Losses (NOLs) related to the same activity

2. Anticipation of the tax deduction of depreciation of fixed assets, except raw land. Unlike other companies, there are no fixed terms established in the law.

11.2.1.2 Tax on Credit, Exchange and Warranty Transactions (IOF)

The IOF is generally due at a rate of 0.38% of the loans and warranties amounts. In the case of exchange agreements for the purchase of foreign currency in cash, the rate is 1.10%.

Nonetheless, the IOF rate may be decreased to zero, or its collection may not apply to certain transactions involving agribusiness-related financial instruments.

11.2.1.2.1 Zero Rate (Article 8, IV of Decree No. 6,306/07)

The IOF-crédito rate is decreased to zero in credit lines for investments, financing and sales of rural products.

11.2.1.2.2 Exemptions (Articles 23, III and 34, III of Decree No. 6,306/07)

IOF is exempted in the following operations:

(a) Concession of Rural Warranties

(b) Sale of rural products bonds (CPR) in the stock market (bolsas) or in the floor market (mercado de balcão)

11.2.1.3 Other Exemptions – withholding taxes (for legal entities and individuals)

Law No. 11,033/2004 (Article 3) establishes the exemption from withholding income tax over the income related to the following financial instruments:

(a) Remuneration generated by the Certificate of Agribusiness Deposit (CDA), Agribusiness Warrant (WA), Certificate of Agribusiness Credit Rights (CDCA), Agribusiness Letter of Credit (LCA) and Certificate of Agribusiness Receivables (CRA)

(b) Remuneration of the Rural Products Note (CPR), given that the negotiation of these bonds occurred in the open market

11.2.1.4 Social Contributions on Gross Revenues (PIS/Pasep and COFINS)

11.2.1.4.1 Presumed Credits

Tax incentives related to PIS/Pasep and COFINS due over the company's gross revenues, have also been granted to agribusiness.

Since the enactment of Laws No. 10,637/02 and 10,833/03 and the adoption of the non-cumulative method in the calculation of the contributions, there has been a potential increase in the costs of companies in general.

Hence, the federal government granted presumed PIS and COFINS tax credits to companies in the agribusiness sector.

Since 2004, pursuant to Law No. 10,925/04, the law allows agribusiness companies (including cooperatives) to record presumed credits of the contributions in the purchase of raw materials, semi-elaborated products and other items needed to produce foods for human and animal consumption.

The presumed credit ranges from 20% to 60% of the PIS and COFINS rates that apply to the operation, depending on the types of products to be produced.

11.2.1.4.2 Suspension of PIS and COFINS

In addition to the concession of presumed credits, Law No. 10,925/04 also establishes the suspension of collection of these contributions in the following situations:

- Sale of coffee, wheat, rye, barley, oats, corn, rice and sorghum of seeds

- Sale of raw milk when the operation is carried out by a company that also provides transportation and cooling of the milk
- Sale of raw materials for the production of the aforementioned products, among others, when the sale is carried out by agricultural companies or cooperatives engaged in agribusiness

The suspension applies only to the sales to companies that calculate IRPJ and CSLL based on the real profit system and according to the specific regulations established by the Brazilian Federal Revenue (RFB).

11.2.1.4.3 Exemption of PIS and COFINS in exports

The general exemption that applies to PIS and COFINS in exports is extended to the exports of agribusiness products.

In addition, Law No. 10,925/04 benefits, by decreasing the rates of these contributions to zero, the importation and sale of fertilizers, flour, some types of cheeses, specific types of milk for human consumption, among other agribusiness-specific products.

11.2.1.5 Excise Tax (IPI)

The Excise Tax (IPI) is a federal tax due on industrial activity in general. The outflow of industrialized products from the industrial plant is the tax triggering event and the IPI rates are established in the IPI Excise Tax Incidence Table(TIPI), ranging according to the type of product and its essentiality. The IPI also applies on the importation of industrialized products.

According to the law, industrialization means any process that modifies the nature, function, finishing, appearance or purpose of the product, or that merely improves it for consumption. Many agribusiness products are not subject to IPI because they are not manufactured according to the law.

The IPI rates that apply to manufactured agricultural products usually are lower when compared to other products, due to the aforementioned principle of essentiality. Thus, the IPI rate is established according to the product's relevance to the community as a whole, and, therefore, there are many agribusiness products subject to a zero tax rate or even not reached by taxation (e.g., sugarcane, coffee, soybean, wheat and ethyl alcohol for carburetion effects).

The federal government can change the IPI tax rate by Decree (Decreto), not being subject to the legality principle (princípio da legalidade), which requires the enactment of a proper law (Lei) to increase or establish taxes. In the case of the IPI tax, therefore, the law establishes the maximum tax rate, allowing the federal government to change the percentages within this limit, always according to its political and economic convenience. In any event, the tax rate increase shall only be effective in 90 days (principle of the 90-day prior enactment or princípio da anterioridade nonagesimal).

11.2.1.6 Social Security Contribution (INSS)

According to the Brazilian Constitution and Law No. 8,212/1991, social security contributions and third-party contributions (e.g. SESC, SENAC, SEBRAE, INCRA) are due over the total remuneration paid by the company, at a rate of approximately 28.8% (CPP: 20%, SAT: 1.2 or 3%, and Third Parties: 5.8%).

As a general rule, the contribution collected by the company to Social Security is regulated by Article 22 of Law No. 8,212/1991, applied over the total remuneration paid, due or credited for any reason, in the month, to covered employees and sporadic workers that render services to the company, as compensation for the work, regardless of its form, including tips, common income in the form of utilities, and advances resulting from salary adjustments, whether for the work effectively labored or for the time at the employer's or service taker's disposition, according to the law or labor agreement or, further, collective labor agreement or court ruling.

However, in regard to rural producers and the companies classified as agro-industries, the rule is different and specific, addressed in Article 22-A of Law No. 8,212/1991 and Law No. 13,606/2018.

In this regard, the law created a substitute contribution that applies to the sale of the rural production (and not over the workers' compensation), being mandatory for agro-industries and optional for rural producers.

Thus, for example, in regard to legal entity agro-industries, the contribution that applies over the agribusiness production revenue is 2.85%, of which 2.5% is for Social Security, 0.1% for Work Accident Insurance (SAT), and 0.25% for the National Rural Learning service (SENAR).

Additionally, it should be emphasized that other social security contributions are due depending on the activity.

11.2.1.7 Rural Property Tax (ITR)

Another federal tax that applies to rural activity is the Tax on Rural Properties (Imposto sobre a Propriedade Territorial Rural or ITR), due based on ownership, useful domain, or possession of real estate located outside of the urban area of the municipality. The ITR is collected annually, with its tax base being the value of the property, reduced by the value of the improvements, crops, cultivated pastures and planted forests.

Considering that the ITR is a progressive tax that seeks maintenance of the productive properties, the ITR tax rate varies based on the property's ratio of use, hence the higher that is the ratio of use of the property, the ITR tax rate shall be lower. Additionally, the tax rate also varies based on the size of the property, ranging from 0.03% to 20%, according to these two variables.

11.2.2 State Taxes

In regard to the agribusiness sector, most of the state tax incentives relate to ICMS (State Sales Tax or VAT). Although each state may adopt a different approach, the most common incentive adopted by the states is the grant of presumed tax credits and specific exemptions, as well as rate decreases, particularly for products that comprise the list of essential products.

The concession of presumed ICMS tax credits works similarly to the presumed credits of PIS and COFINS. Generally, the taxpayer is granted a credit, even if the purchase is not subject to the tax, which will be used to offset the ICMS amount due in the sale of products to the next link in the chain of sale.

In any event, it is important to mention that the incentives offered by states must be previously agreed upon by the National Council for Financial Policy (CONFAZ), responsible for regulating the general conditions for granting ICMS tax incentives.

Thus, if a state grants a tax incentive without CONFAZ approval, this incentive may be legally challenged by the other states.

The general immunity of ICMS in exports also applies to agribusiness products. Additionally, ICMS is not due in the negotiation of agribusiness securities, provided that such operation is not considered a sale of goods given the absence of circulation of the goods underlining the securities.

11.2.3 Taxation of Individuals

11.2.3.1 Income Tax (IRPF)

The income of rural activity, when positive, shall comprise the tax base of the individual's annual income tax report (IRPF – Declaração de Ajuste Anual).

According to Article 18 of Law 9.250 of 1995, the income generated by rural activity shall be calculated according to the entries recorded in the Cash Book (Livro Caixa), computed monthly, covering the revenues, expenses and investments. In other words, it considers the difference between the revenues received and the maintenance costs and investments paid in the calendar year, with the possibility of offsetting the negative result.

The maintenance costs are defined in Article 55 of the Income Tax Regulation of 2018, consisting in the expenses that are necessary to obtain income and maintenance of the productive source related to the nature of the activity carried out, while investments are characterized as the application of financial resources, except the part that corresponds to the value of bare land, to develop the activity for production expansion or improve the agricultural productivity.

The bookkeeping of the Cash Book imposes on the taxpayer the burden of proving the veracity of the revenues and expenses recorded therein through trustworthy documentation that identifies the buyer or beneficiary, the value and the date of the operation, which is required to remain in the taxpayer's possession for inspection by the tax authorities, until the statute of limitations expires. When the total annual gross revenues does not exceed BRL 56,000, it is allowed to calculate the result through documentary evidence, without need of the bookkeeping of the cash book, with the result being the difference between the total revenues and the total expenses/investments.

The individual taxpayer may also calculate the result by the accounting method, in which the entries must be made in specific accounting books, necessary for each type of activity, according to the relevant accounting, commercial, and tax rules for each of the books. It should be emphasized that, in the case of exploitation of a rural property by more than one individual, each rural producer must record the parts of the revenue, maintenance costs, investments and other sums that comprise their portion of the rural activity.

11.2.3.2 Calculation of Capital Gain

The capital gain, specifically in the case of sale of a rural real estate, is established in Articles 8 and 19 of Law No. 9,393 of 19 December 1996, which state that the acquisition cost and sale price of the rural real estate shall be considered as the value of the bare land (VTN) declared in the Rural Property Tax Information and Calculation Document (DIAT).

Thus, in regard to the real estate acquired as of 1 January 1997, the VTN is considered the acquisition cost and sale value of the rural real estate,

respectively, in the years of the acquisition and sale thereof, including the value of the respective native forest, not computing the costs of betterments, permanent and temporary crops, planted trees and forests and cultivated or improved pastures.

However, it is important to emphasize the understanding of the Brazilian Federal Revenue and part of the jurisprudence of the Administrative Council of Tax Appeals (CARF) in the sense that the sales that occurred prior to the filing of the DIAT are not subject to calculation according to the VTN but, to the actual values of the operation. Therefore, the rural real estate sale operations should be analyzed individually.

If the DIATs have not been filed in relation to the years of acquisition or sale, the capital gain should be calculated based on the actual values of the operation.

11.3 Tax Reform

Among the main objectives of the ongoing tax reform in Brazil is the simplification of the system, with the unification of consumption taxes (*CBS* will replace IPI and PIS/COFINS, and *IBS* will replace ICMS and ISS).

On 16 January 2025, Supplementary Law No. 214/2025 was enacted, regulating Constitutional Amendment No. 132/2023 (Tax Reform) and introduced the Goods and Services Tax (IBS), the Social Contribution on Goods and Services (CBS), the Selective Tax (IS) and the IBS Management Committee.

The following points stood out during the legislative process of this Law:

a) **Points inserted by the Senate and rejected by the House of Representatives in the final bill:**

- The 60% discount on the rate applied to veterinary services was removed. Pursuant to the rejection by the House of Representative, the discount shall be only 30% on these services
- The 60% discount on mineral water and cookies was removed. In this case, pursuant to the rejection, the "full" rate is expected to be applied, that is, without any discount.

b) **Points inserted by the Senate and maintained by the House of Representatives in the final bill:**

- Monophase system for hydrated ethanol in the transition period, in regard to the collection of PIS/COFINS.

c) **Other highlights:**

- **Basket of food staples**: defines the products listed as exempt from IBS and CBS.
- **Exempt Proteins**: defines that meats, poultry and fish in the national basket of food staples have a zero rate of IBS and CBS.
- **Other foods with a 60% decrease (IBS and CBS)**: crustaceans, dairy compounds, honey, flour, cereals, pasta, juices, white bread, fruits, among others.

Tax data from the transition period (2026 to 2030) will form the basis of a report estimating the standard rate that will be charged as of 2033, when the entire system is expected to be implemented. If the rate exceeds 26.5%, the federal government will have to send a bill to Congress aiming to bring the tax rate up to this level.

11.4 New Transfer Pricing Rules for Commodities

The new Brazilian transfer pricing rules established by Law No. 14.596/2023 became effective on 1 January 2024, aligning Brazilian law with OECD guidelines. Transactions with commodities continue to be considered controlled transactions whenever conducted between two or more interrelated parties. According to the law, a commodity is a physical product, regardless of the stage of its production, and the by-products for which quotation prices are used as a reference by unrelated parties to establish prices in comparable transactions.

Intellectual Property Protection and Biotechnology Aspects

12 Intellectual Property Protection and Biotechnology Aspects

12.1 Brazilian Biodiversity and Associated Traditional Knowledge

The Brazilian Constitution promotes the protection of biodiversity among its fundamental environmental principles. In this sense, a federal decree ratified the "International Convention on Biodiversity Protection," signed during the United Nations Environmental Convention held in Rio de Janeiro in 1992. The convention seeks to protect and preserve the biodiversity, the sustainable use of its resources and fair sharing of the benefits resulting from the use of genetic resources.

In addition to the convention, there are other relevant legal documents enacted to oblige individuals and legal entities, such as Law No. 13,123/2015 (Brazilian Biodiversity Law) and its Regulatory Decree No. 8,777/2016, which incorporates the principles and purposes of the Convention and regulates the access to genetic resources and traditional knowledge, and creates benefit-sharing mechanisms.

Furthermore, in 2021 Brazil also ratified the Nagoya Protocol, which had been signed in 2011 and approved by Legislative Decree No. 136/2020.

The Protocol, ratified by approximately 130 countries, establishes international rules for the use of genetic resources and benefit-sharing for the economic use of biodiversity.

More recently, after the 15th Convention of the Parties (COP 15) held in December 2022 in Montreal, the Global Biodiversity Framework was convened, aiming to address biodiversity loss, restore ecosystems, and protect indigenous rights. The text of the framework has not yet been internalized by Brazil, but its goals are expected to be included in the regulatory legislation of the Nagoya Protocol.

12.1.1 The Brazilian Biodiversity Law

The Brazilian Biodiversity Law (Law No. 13,123/2015) and its regulation (Federal Decree No. 8,772/2016) establish objectives and rules for access to genetic resources and traditional knowledge in the country.

Brazilian legislation requires that all research and development using genetic resources or traditional knowledge associated with Brazilian biodiversity must be registered in the National System for the Management of Genetic Resources (SiSGen).

SiSGen also provides related information needed to track activities resulting from access to the genetic resources or associated traditional knowledge contained in the system's databanks, including protection and registration of plant varieties, seeds and seedlings, products, agricultural inputs and facilities, as well as information on the international transit of agricultural products and inputs provided by the Ministry of Agriculture, Livestock, and Supply.

Although all of the links in the production chain are subject to the registration obligations established in the law, as a general rule only the manufacturer of the final finished product is subject to the benefit-sharing obligations.

However, a point that should be emphasized is that, in regard to agricultural activities (its legal definition includes activities such as the production, processing, and commercialization of foods, beverages, fibers, energy and planted forests), the economic exploitation of reproduction material is subject to benefit-sharing obligations.

The benefit-sharing mentioned above refers to a mandatory monetary payment for the access to associated traditional knowledge of a known-origin in Brazil. This may occur through technology transfer measures or the free distribution of products of national interest, for example. In such cases, the final value of the non-monetary payment must correspond to 75% of the monetary payment. On the other hand, when the associated traditional knowledge has an unknown origin, the payment must necessarily be done through the monetary alternative, corresponding to an amount between 0.1% and 1% of the annual net revenue gained from the economic exploitation of these products.

In order not to harm their competitiveness, the Biodiversity Law exempts micro- and small-sized companies and traditional farmers and its cooperatives from the aforementioned payment.

Finally, the regulation also establishes that any violation of the Biodiversity Law shall subject the violator to the seizure of the samples containing genetic resources, cancellation of its authorization to access genetic resources, and a fine of up to BRL10,000,000, among other penalties.

After the law was enacted, IBAMA has carried out several operations to monitor activities potentially utilizing national biodiversity. The most recent operation, initiated in February 2023, has already applied fines totaling more than BRL 790,000 by the end of March 2023.

12.2 Plant Varieties

The Plant Variety Protection Law (Law No. 9,456/1997) erstablishes protection for the vegetative reproduction and multiplication in Brazil. This law was regulated by Decree No. 2,366 of 5 November 1997.

In the case of genetic improvement resulting from a labor agreement, services agreement or other labor activity, the protection request must indicate the names of all breeders who, as employees or service providers, obtained the new plant variety or essentially derived plant varieties.

The provisions of Law No. 9,456/1997 also apply to the following cases:

I. Protection requests for plant varieties originating from abroad and deposited in the country by an individual or legal entity, the protection of which is warranted by a treaty in force in Brazil.

II. Brazilian citizens or persons domiciled in a country that warrants reciprocity of equal or equivalent rights to Brazilians or persons domiciled in Brazil.

The provisions of the treaties in force in Brazil apply, under equal conditions, to individuals or legal entities who are nationals or domiciled in Brazil.

Law No. 9,456/1997 defines plant variety as any superior variety of any genus or species of plant that is clearly distinguishable from other known plant varieties by a minimum margin of descriptors; it must also have a distinctive denomination and be homogeneous and stable in its descriptors over successive generations.

To be granted legal protection, the plant variety must be a new plant variety or essentially derived from another.[91]

A new plant variety is defined as follows:

(i) A plant variety that has not been commercialized in Brazil for more than 12 months before the date of filing of the application.

(ii) A plant variety that has not been commercialized abroad for more than six years in relation to trees and vines, and more than four years in relation to other species.

The National Plant Variety Protection Service (SNPC) of the Ministry of Agriculture has gradually published the names of plant species and the minimum descriptors necessary for a plant variety protection application.

The protection of a plant variety must cover the material for reproduction or vegetative multiplication of the entire plant. Plant varieties that have already been marketed up to the date of the application are also subject to protection, provided that the following conditions are met:

(i) The protection application must be submitted within 12 months after the SNPC has disclosed the plant species and the necessary minimum descriptors, as well as the respective deadlines for each plant variety species.

(ii) The first commercialization of the plant variety must have occurred no more than 10 years before the date of the protection application.

(iii) The protection will only be effective for the purpose of using the plant variety to obtain essentially derived plant varieties.

(iv) The protection will be granted for the remaining period established by the law, considering the date of the first commercialization.

The protection warrants to the owner the right to commercial reproduction in Brazil, prohibiting third parties from producing for commercial purposes, offering, or marketing the propagation material of the plant variety without the owner's authorization, during the protection period.

However, such exclusive rights of the owner over the protected plant variety will not be considered violated if someone:

(i) stores or plants seeds for private use;

[91] An essentially derived plant variety must be derived from an initial variety and maintain the essential genotypic characteristics of that initial variety (except for the characteristics of derivation). However, it must be clearly distinguishable from the initial variety by a minimum number of descriptors. The National Plant Variety Protection Service, which is the government entity responsible for granting the protection provided by law, will determine the minimum descriptors necessary for the protection of plant variety.

(ii) uses or sells the product obtained from a variety as food or raw material (except for reproduction purposes);

(iii) uses the variety as a source of variation in genetic improvement or scientific research;[92]

(iv) being a small rural producer,[93] multiplies seeds for donation or exchange, exclusively for other small rural producers, within the scope of financing or support programs for small rural producers, conducted by public agencies or non-governmental organizations, authorized by the government.

The above exceptions do not specifically apply to the cultivation of sugarcane, for which the following additional provisions regarding the right to ownership of the plant variety apply:

I. To multiply vegetative material, even for private use, the producer must obtain authorization from the holder of the plant variety's rights.

II. When payment is required for granting authorization, such payment must not harm the economic and financial balance of the crop developed by the producer.

III. Authorization for seed storage for private use only applies to crops conducted by producers who own or possess rural properties with an area equal to at least four fiscal modules, calculated according to Law No. 4,504 of 30 November 1964, when intended for industrial processing.

IV. These provisions in regard to sugarcane do not apply to producers prove to have started the multiplication process, for their own use, of a protected plant variety, before the Plant Variety Protection Law was enacted.

The Plant Variety Protection Certificate (Certificado de Proteção de Cultivares or CPC) is valid for 15 years as of the date of granting of the provisory protection certificate by the SNPC, except for vines, fruit trees, forest trees, and ornamental trees, for which the term of protection term is 18 years. After the certificate's validity expires, the variety's ownership will fall under public domain. The CPC affords protection against unauthorized growing of the material, propagation of the variety for commercial purposes, as well as against the commercialization or offering without the owner's authorization.

After obtaining the Provisory Protection Certificate or the Plant Variety Protection Certificate, the owner is required to maintain, during the protection period, a living sample of the protected variety at the disposal of the competent authority, subject to the cancellation of the respective certificate if, upon receiving a notification to that effect, the owner fails to present it within 60 days.

Upon obtaining the Provisory Protection Certificate or the Plant Variety Protection Certificate, the owner is required to submit two live samples of the protected

[92] In this case, whenever the repeated use of a protected plant variety is indispensable for commercial production of another plant variety, the owner of the second must obtain authorization of the owner of the first. In addition, whenever a plant variety is characterized as essentially derived from a protected plant variety, the commercial exploitation thereof is conditioned to the authorization from the owner of the referred protected plant variety.
[93] As defined in Article 10, §3º of Law No. 9,456/97.

variety to the competent authority, one intended for handling and examination, and the other to be included in the germplasm collection.

The individual or legal entity domiciled abroad must appoint and maintain an attorney-in-fact duly qualified and domiciled in Brazil, empowered to represent it and receive administrative notifications and judicial summons related to the Plant Variety Protection Law, as of the date of the protection application and throughout its validity, under penalty of cancellation of the protection right.

The power of attorney must grant powers to file the application for protection and for its maintenance with the SNPC, as well as be specific for each case.

When the protection application is not filed personally, it must be supported by a power of attorney granting the necessary powers. The power of attorney must be duly translated by a sworn translator, when drafted abroad.

12.3 Seeds and Seedlings

Law No. 10,711, of 5 August 2003 (Seeds Law) introduced the National System of Seeds and Seedlings. The purpose of this system is to ensure the identity and quality of the vegetal reproduction and multiplication material produced, commercialized and used in Brazil. The Seeds Law is currently regulated by the Decree No. 10,586 of 17 December 2020.

According to the Seeds Law, all individuals and legal entities that produce, process, pack, store, analyze, commercialize, import and export seeds and seedlings must be registered in the National Registry of Seeds and Seedlings (Renasem). Also, the Seeds Law created the National Registry of Plant Varieties or RNC. The production, processing and commercialization of seeds and seedlings are subject to prior registration of the respective plant variety with the RNC.

However, tests, experiments, and research with seeds and seedlings do not require the registration of the researcher in Renasem or the seed in the RNC.

On the other hand, the Seeds Law establishes that the producer of seeds and seedlings must identify the seeds or seedlings and their packaging, stamp, label, or identification tag must contain the specifications established in the Seeds Law Regulation. "Seed producer" is defined by the Seeds Law as the individual or legal entity that, assisted by a responsible technician, produces seeds for commercial purposes.

Moreover, the Seeds Law determines that all individuals and legal entities that produce, process, analyze, pack, repack, provide samples, certify, store, transport, import, export, use or commercialize seeds and seedlings are subject to inspection by the Ministry of Agriculture.

Finally, Decree No. 10,586, of 17 December 2020, establishes the following administrative penalties for violations of the law, which may be applied cumulatively, without prejudice to criminal or civil liability: (a) warning; (b) fine; (c) seizure of seeds, seedlings or propagation material; (d) condemnation of seeds, seedlings or propagation material; (e) suspension of the registration in Renasem; and (f) cancellation of the registration in Renasem.

Failure to comply with the provisions of the Decree may also subject individuals and legal entities engaged in the activities of responsible technician, sampler,

collector, certification entity, or certifier of own production, and penalties to whoever in any way concur in the infraction or benefit from it.

In regard to the importation of seeds there are general requirements, namely:

- The seed must be registered with the Ministry of Agriculture.
- The packaging or label must contain certain information required by the Ministry of Agriculture (name of the species and plant variety, registration number, etc.).
- Any individual or legal entity that produces, processes or sells seeds must also be registered with the Ministry of Agriculture.

12.4 Genetically Modified Organisms

Since 2005, Brazilian Law No. 11,105/05 (Biosafety Law) regulates activities involving genetically modified organisms (GMOs) in Brazil. Additionally, regarding Biosafety, the Cartagena Protocol on Biosafety was ratified in Brazil by Federal Decree No. 5,705/06.

The Biosafety Law establishes safety and inspection mechanisms for the use of genetic engineering techniques for the manipulation, harvesting, transportation, consumption, commercialization, and disposal of GMOs, to protect public health and the environment. For the purposes of this law, a GMO is any organism whose genetic material has been modified by any genetic engineering technique. For the importation of genetically modified seeds into Brazil, the importer must obtain prior approval from the National Technical Biosafety Commission (CTN-Bio) and the Ministry of Agriculture.

The Biosafety Law is enforced by CTNBio, which is responsible for implementing and updating the National Biosafety Policy and the enactment of regulations concerning GMOs. The final decision on the commercial approval of GMOs is provided by the National Biosafety Council (CNBS).

The regulation establishes, among other provisions, that any company that intends to carry out activities related to biotechnology in Brazil, including research, development and production of GMOs, must obtain a Biosafety Quality Certificate issued by CTN-Bio and create an Internal Biosafety Commission. Registration with the Ministry of Agriculture is also required. The presentation of the aforesaid certificate must be required by the public and private organizations, national, foreign, or international, that finance or sponsor activities or projects involving GMOs and their derivatives, under penalty of being co-responsible for any effects pursuing from the failure to comply with this Law or its regulations.

Additionally, any company that intends to engage in biotechnology-related activities in Brazil must obtain environmental licenses according to the federal and state laws. Federal Ordinance CONAMA No. 305/2002, for example, regulates the environmental licensing proceeding and the applicable studies for the release of GMOs and their derivatives into the environment.

Several Normative Instructions and Resolutions have been issued by CTNBio regarding GMOs. The procedure for releasing GMOs into the environment, as well as the importation, commercialization, transportation, storage, handling, consumption, and disposal of GMO-derived products are subject to regulation and control by CTNBio. For example, Normative Resolution No. 32/2021 addresses

the commercial release and monitoring of GMOs and their derivatives, and Normative Instruction No. 02/1996 establishes provisory rules for the importation of genetically modified plants for research purposes.

According to the Biosafety Law, however, the environmental protection agencies have authority only to establish requirements for the approval of certain GMOs if CTNBio finds that such products have the potential to cause a substantial negative environmental impact. This provision has been challenged before the Supreme Court (STF) but has not yet been reviewed.

It is important to emphasize that even if a certain GMO is approved for commercialization, CTNBio may decide to conduct post-commercial release monitoring of these organisms, according to Normative Resolution No. 9/2011, to assess any harmful effects resulting therefrom on human health, animal health, and the environment. In this process, if a cause/effect connection linking the existing adverse effects and the biosafety features of a particular GMO is proven, the technical decision that accepted the commercial release of such GMO may be, depending on the case, suspended or revoked.

Furthermore, according to the Biosafety Law, human cloning and the use, commercialization, registration, patenting, and licensing of human intervention technologies for the generation or multiplication of genetically modified plants to produce sterile reproductive structures, as well as any form of genetic manipulation to activate or deactivate genes related to plant fertility by external chemical inducers, are illegal.

The release of GMOs into the environment without observing the CTNBio regulations, as well as the planting, production, transportation, commercialization, import, export or storage of GMOs or their by-products without authorization or compliance with the law, are considered crimes under the law. Additionally, administrative sanctions and civil law liability are also applicable in the cases of environmental degradation or damage to third parties caused by GMOs.

Federal Decree No. 4,680/2003 regulates the right to information warranted by Law No. 8,078/1990 (Consumer Protection Code), especially regarding genetically modified foods or ingredients intended for human or animal consumption or produced from GMOs. According to Decree No. 4,680/2003, any type of food or by-product containing more than 1% of GMO must include a notice on its packaging, such as "transgenic (product name)" "contains transgenic (name of ingredient or ingredients)", "product produced from transgenic (product name)." The donor species of the gene must also be indicated in the identification of the ingredients. Foods and ingredients produced from animals fed with feed that contains transgenic ingredients must state "(animal name) fed with feed containing transgenic ingredient" or "(ingredient name) produced from animal fed with feed containing transgenic ingredient."

The legislation establishes specific criteria for the commercialization of foods containing soybean. The 1% limit does not apply to the inclusion of the expressions "may contain transgenic soybean" and "may contain ingredient produced from transgenic soybean," which must be stated in the products irrespective of the percentage of transgenic soybean. Additionally, foods produced from soybean harvested in 2003 are not subject to the aforementioned labeling, subject to certain specificities.

Federal Ordinance No. 2.658/03 regulates the inclusion of the GMO symbol on the packaging.

12.5 Protection of the Intellectual Property Associated with the Genetically Modified Plants and Plant Varieties

It is advisable to seek protection for the intellectual property associated with genetically modified plants and plant varieties in Brazil. Such protection may be relevant for purposes of:

(i) prevent the unauthorized use of the biotechnology in Brazil;

(ii) enable the company to charge royalties from Brazilian farmers for certain uses of the patented technology in the future; and

(iii) since Brazil adopts exchange control regulations, the ownership of patent rights in Brazil may also be relevant to enable the foreign remittance of royalties.

If the technology used to develop the genetically modified seeds is owned by a third party and was licensed for certain types of use, it is important to check (i) whether such third party has applied for patent and plant variety protection in Brazil; and (ii) whether license agreements covering Brazil exist. Moreover, the licensing of plant varieties and GMOs in Brazil depends on the type of right that the licensor holds.

a) Transfer of Technology

If the licensing of intellectual property rights related to GMOs or plant varieties pursues from a granted patent (see section 12.6 below) or technology related thereto, these rights may be licensed through a patent license or a technology agreement proposal, which must be registered before the Brazilian PTO (Instituto Nacional da Propriedade Industrial or INPI) for enforcement in regard to third parties, foreign remittance of payments and deductibility of payments for local income tax purposes. In regard to the transfer of technology, the Brazilian PTO has a consolidated understanding that, once transferred, the technology is permanently transferred to the Brazilian recipient. As a result, it does not allow this transfer to be perpetual, usually establishing a five-year term (considered sufficient for the Brazilian recipient to absorb the technology), possibly extendable for an additional five years if certain conditions are met. Patent license agreements, on the other hand, can be effective for the whole validity of the patent registration.

Both of the aforementioned agreements, however, are subject to laws and regulations that limit the deductibility of payments to a foreign entity in regard thereto. Ordinance No. 436/1958 of the Ministry of Finance establishes the maximum caps for tax deductibility of payments due related to the technology supplied and patent license, ranging from 1% to 5% based on the net sales of the products manufactured, according to the industry involved and its industrial essentiality levels.

It should also be emphasized that the law establishes that between interrelated companies (i.e., in a controlling company/subsidiary relationship in which one party directly or indirectly controls at least 50% of the voting capital of the other party), the same deductibility percentage as a limit for the foreign remittance of

royalties applies. This means that a Brazilian subsidiary of a controlled foreign company is limited to remit 1% of the net sales price of products produced under the subject technology or patent license.

b) Licensing of Plant Varieties

If the licensor lawfully holds a Plant Variety Protection Certificate there are no legal impediments or requirements for the licensing of such rights thereunder.

12.6 Patent protection

According to Law No. 9,279, of 14 May 1996 (Brazilian Industrial Property Law), the part of natural living beings and biological materials found in nature, including genome and germplasm of any natural being and the natural biological processes are not patentable, except for transgenic microorganisms that meet the requirements of patentability (novelty, inventive activity and industrial application) and that are not a mere discovery. For the purposes of the Industrial Property Law, GMOs are defined as organisms (except for plants or animals, wholly or partially) that, due to direct human intervention in their genetic composition, express a characteristic that cannot be normally achieved by the species under natural conditions.

A priority right shall be granted to the application filed in a country that has signed a treaty with Brazil or is a member of an international organization or treaty to which Brazil is also a member, such as the Paris Convention.

Patent applications must be filed before the Brazilian Patent and Trademark Office (Instituto Nacional de Propriedade Industrial or INPI), and the patent protection is afforded for 20 years (for inventions) or 15 years (for utility models), as of the filing date.

The patent warrants to its owner the right to prevent unauthorized third parties from manufacturing, using, offering for sale, selling or importing the patented product, or the product directly obtained from a patented process.

Trench
Rossi
Watanabe.

OUR OFFICES

SÃO PAULO
Av. Dr. Chucri Zaidan, 1649
31º andar - Edifício EZ Towers
Torre A | 04711-130
São Paulo - SP - Brasil
Tel.: +55 11 3048.6800

RIO DE JANEIRO
Rua Lauro Muller, 116 - Conj. 2802
Ed. Rio Sul Center | 22290-906
Rio de Janeiro - RJ - Brasil
Tel.: +55 21 2206.4900

BRASÍLIA
Saf/s Quadra 02 - Lote 04 - Sala 203
Ed. Comercial Via Esplanada | 70070-600
Brasília - Distrito Federal - Brasil
Tel.: +55 61 2102.5000

PORTO ALEGRE
Av. Soledade, 550
Cj. 403 e 404 | 90470-340
Porto Alegre - RS - Brasil
Tel.: +55 51 3220.0900