

**A COMPARISON OF THE NATURAL RESOURCES LAWS OF BRAZIL AND MEXICO
AND ITS RELATIONSHIP TO AGRIBUSINESS**

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ABSTRACT: The objective of this study was to perform a comparison between the legislation regarding environment and natural resources in Brazil and Mexico and to determine how promote or hamper agribusiness, the research is conducted through a literature review of the current legislation in both countries and the identification of their communalities and differences. It is concluded that environmental legislation in Brazil and Mexico, despite having similarities, also show differences in their approach. While Mexico focuses on preserving natural resources, Brazil seeks a balance between conservation and use of natural resources through agribusiness.

KEYWORDS: agribusiness, environmental legislation, Latin America, strategic advantage.

1 INTRODUCTION

Since Brazil is now considered an agricultural powerhouse and is ranked at the second place worldwide in the exportation of agriculture products rank (ARAÚJO, 2012), some serious concerns are arisen regarding environment management, especially if an irrational exploitation of resources is suspected. Companies hungry for production are at one end, while the devastation of nature being by unsustainable management practices is at the other.

Much has been discussed in recent years regarding the reform of the Brazilian Environmental Code, which was signed in May 2012. Some people advocated for a less favored environmental protection and amnesty to those environmental crimes previously committed while experts and environmentalists clamored for increased resource preservation. They claim that despite the fact that environmental laws are in place for decades, they have been unable to prevent the growth of agribusiness, so changing the code only would bring more destruction to nature.

Some argue that this increase was due to many studies and use of new technologies along with sustainable management practices. According to Trecenti (2012), Brazil was able to significantly increase its productivity through efficient production and also because once degraded lands were recovered with the aid of these technologies. Thus, changing the Environmental Code and allow further exploration of

cropland and natural resource extraction would not result in a higher agriculture production growth in Brazil.

Likewise, Mexico has the second highest population of Latin America and its dynamic economy has the United States as one of its major trading partners, in addition to maintaining trade agreements with over 40 countries. Like Brazil, its legislation on natural resources has been updated recently, but its impact on agribusiness and natural resources has not been sufficiently evaluated.

Regardless of the different opinions about the New Brazilian Environmental Code, it exists and is in place to protect the most valuable asset of humankind. But, at the end, what is that the code prescribes when it comes to agribusinesses? What are the precise requirements that producers must follow to ensure law enforcement? The aim of this article is to examine these questions and compare Mexico's environmental laws with those of Brazil to identify how strategic they are to promote agribusiness and natural resource conservation.

2 THE CASE OF BRAZIL

Brazil has thirty-one licensing agencies at the state level and licensing agency at the federal level, known as BIENR (Brazilian Institute of Environment and Natural Resources). These organs empower, assist and control all human activities that affect environmental conditions.

In addition to the 1988 Constitution, which organizes the State and grants the rights and the duties of citizens (SUPREMO TRIBUNAL FEDERAL, 1988), Brazil has a valuable tool to assist in environmental conservation and sustainable development of natural resources: the New Brazilian Forest Code (PRESIDÊNCIA DA REPÚBLICA, 2012). Beside it, there are other seventeen prevailing laws related to the environment : Public Civil Action Law , Pesticide Law , Law on Environmental Protected Areas, the Nuclear Activities Law, the Environmental Crimes Law, Law on Mineral Exploration, Forestry Law, Coastal Management Law, Law for Creating BIENR, Law for Urban Land Plotting, Cultural Heritage Law, Law of Agricultural Policy, Law for National Environmental Policy, Water Resources Law, and Law for Industrial Zoning of Critically Polluted Areas.

According to Mota (2013), the New Brazilian Forest Code is considered by professionals of Forestry, one of the most advanced and strict codes of the world, since it seeks to balance Agriculture and Environmentalism. The New Code is divided into fourteen chapters, which deal with the protection, control and protection of natural resources and the environment, but with greater focus on the Agriculture issue. The main points are related to the preservation of native vegetation. Articles 12-25 of Chapter IV make provisions on legal reserves, which are areas which should be preserved within a property, i.e., the individual is allowed to use the natural resources present in the property, but a certain fraction of the land should be preserved, thus avoiding exploiting the total area and promoting the conservation of native vegetation.

Recognizing the immeasurable wealth and importance of biodiversity in the Amazon region, the New Code make specific provisions for those states that are included in the Legal Amazon region (i.e. Acre, Amapá, Amazonas, Pará, Rondônia, Roraima, Tocantins, and part of Mato Grosso and Maranhão).

According to Reis (2012), the Legal Amazon region was established in 1953 with the aim of promoting and planning the development of states that compose it, since they share similar physical characteristics, particularly common economic, political and social problems. The size of those areas authorized for cultivation and exploitation in this region are considerably lower than in other states of Brazil. The New Code determines that when lands are located in forested areas, the property must have at least 80 % of its surface preserved; in turn, in the savannah region, 35 % of the total area in property must be preserved by the owner, and when the forest is located in areas of general fields in the remaining states, only the 20 % should be preserved.

It is noteworthy the existence of the "Environmental Reserve Quota" which is provided for in Article 66, paragraph 5. According to this, it is allowed that a legal reserve in a particular property might be compensated by another property, when both belong to the same biome and are located within the same state.

The Chapter VI provides information about RER - the Rural Environmental Registry, which was created along with the new Forest Code and is gradually being implemented in the Brazilian states. In order to use the soil, whatever the size of the area or the activity performed, it is mandatory for the owner to be enrolled in the RER.

For Pineda (2013), the RER benefits both, farms owners, as well as the country and environmental agencies because among the many advantages of the Registry, it will be possible to determine the real situation of the properties in the country and what is the preservation situation at each one, as well as to identify the areas in need for recovery and speed up the process to grant rural credits from Financial Institutions.

The point of greatest prominence in the New Brazilian Forest Code is the focus given to agribusiness and family farming. According to Schuch (2012), the incentive to agriculture streamlines the development for other economic sectors. He further states that establish a development project in the municipal or even regional sustainable family farming, is not just a policy proposal for the rural sector, but a necessity and a prerequisite for strengthening the economy of many Brazilian municipalities.

The New Code has an entire chapter devoted to Family Farming. Article XII obliges family farmers to be enrolled in RER; however, the process becomes more streamlined. The owner must submit the data identifying his/her property, an area for Permanent Preservation and a Legal Reserve, and then the competent organism, known as SISNAMA (National Environment System) becomes responsible for capturing the area coordinates in a database. The issue of Legal Reserve and Permanent Preservation Area also receives special treatment when it concerns to the Family Farm. One of the main goals of this law is to encourage the development of activities carried out by many small producers that may strengthen the economy of the country.

Filippin (2013) argues that the new Forest Code will allow farmers, especially smallholders and family-based growers, to be benefited from the natural resources present on their properties and use the native vegetation in a sustainable way. Thus, the intervention and removal of vegetation on these areas for activities with low environmental impact and even the presence of agroforestry farms for family

consumption is allowed, but for non-commercial use. For the maintenance of these areas fruit, ornamental or industrial trees may be added to regional native species.

In order to emphasize that it is more advantageous to preserve than to destroy, Chapter X describes Support and Incentive Programs for Preserving and Restoring the Environment. The New Code states that those landholders abiding forest legislation, using best management practices and promoting the maintenance and enhancement of the environment will be duly rewarded.

As mentioned by Vigna (2011), among many other incentives, the New Code allows obtaining agricultural loans with lower interest rates and longer terms than those on the market, the use of public funds for lending for the compensation, the rehabilitation or restoration of degraded areas and tax exemption for acquiring equipment for use in these purposes.

Even though the New Code is very complex, it contains other issues regarding coastal areas management, conversion of vegetation to an alternative land use, control and origin of forest products, banning the use of fire, fire prevention and deforestation control. The New Code can be employed not only for benefiting the environment, but it also could be a business opportunity for anyone who is related to environmental issues.

3 THE CASE OF MEXICO

Mexican Political Constitution, similarly to Brazilian Federal Constitution, is the supreme law of the country. Both countries also share an organization as a federative republic as well as the division of powers and the autonomy of the states.

Environmental legislation in Mexico is very diverse. This includes the Political Constitution, federal, state and local laws, regulations, norms and decrees. The constitutional foundations for environmental policy are included in its articles 4, 25, 26, 27 and 73. The article 4 provides for the fundamental right to health protection and, more specifically, the right of everyone to an adequate environment for their development and welfare. The article 25 deals with the care and conservation of productive resources and the environment, due to the regulation for the use of productive resources by the social and private sectors, as well as the comprehensive and sustainable development. The article 26 lays the foundations for a democratic planning system and the right to social participation. The article 73 in its sixteenth fraction refers to the prevention and control of environmental pollution and in its fraction XXIX G empowers the Congress to enact laws on environmental protection, preservation and restoration of ecological balance. Article 27 contains most of the provisions on land property and natural resource conservation. It includes aspects such as the limitations and conditions to property, the regulation of natural resource elements, actions to preserve and restore the ecological balance and measures to prevent the destruction of the natural elements. In short, the constitutional provisions provide three perspectives: the conservation of natural resources subject to appropriation, the prevention and control of environmental pollution affecting human health, and care of the environment from the use of productive resources by the social and private sectors.

There are also several applicable environmental laws, among which are the National Assets General Law, the National Water Law, General Law for Sustainable Forest Development, the Wildlife General Law, the Law for Rural Sustainable Development, as well as some minor dispositions in the Metrology and Standards Law, the Fisheries Law, the Federal Law of the Sea, and the General Health Law.

The General Law of Ecological Equilibrium and Environmental Protection (GLEEEP) refers to the preservation and restoration of ecological balance and the protection and management of the environment, through the regulation of environmental policy, environmental law and environmental management. Its provisions are of public order and social interest and are intended to encourage sustainable development and establish the basis for ensuring the right of every person to live in an environment adequate for their health and welfare.

GLEEEP grants the Secretary of Environment and Natural Resources the responsibility to coordinate all environmental actions. It also sets various offices to oversee several related activities: the National Institute of Ecology, the National Water Commission, the Federal Attorney for Environmental Protection, the National Commission of Natural Protected Areas, the National Forestry Commission and the Mexican Institute for Water Technology.

Articles 4-10 in GLEEEP establish institutions and environmental authorities at all levels in areas such as wildlife, knowledge and use of biodiversity, forestry and land management, protection and restoration programs, economic support programs and monitoring law compliance. The law also considers environmental policy instruments including such diverse aspects as plans and programs, ecological land management, economic instruments, environmental regulation of human settlements, environmental impact assessment, self-regulation and audits.

GLEEEP includes environmental policy instruments, either by direct regulation (licenses, permits and concessions) as by other means. This law makes provisions for protected areas, restoration areas, and intermediate safeguard zones. Ecological land management is an environmental policy instrument aimed to regulate land use and its productive activities, in order to protect environment, preserve and use natural resources in a sustainable way. The law also describes environmental impact evaluation, environmental audits, natural protected areas management and the national system for environmental information.

4 COMPARATIVE ANALYSIS OF LAWS

Even though environmental protection laws exist in all countries, it becomes increasingly habitual its disrespect. What arouses curiosity is the variety of reasons contributing to this phenomenon, even when the lack of care for the planet is so explicit. Whether influenced by its culture, by its laws, its education system, or even by self-interest, each country acts differently with respect to law enforcement. For instance, the Brazilian Forest Code has been changed several times since its first edition established in January 23, 1934 by the Decree n. 23.793. It was ratified in September 15, 1945 by the Federal Law n. 4.771 and, recently, rectified by the Federal Law n. 12.651 and complemented by a temporary regulation issued by the president in May 25, 2012.

At a time when globalization is a global phenomenon, comparing legislation across countries is necessary because it facilitates the understanding of many undergoing processes (Cassese, 2005). In this case, it helps to understand how public policies on natural resources favor or hamper agribusinesses.

Table 1 shows a comparison of environmental legislation in Brazil and Mexico. It is noteworthy that while there is a legal support for most of the items, in both countries there are some aspects that have not been considered in their law.

Table 1 - Comparison of environmental legislation in Brazil and Mexico

Item	Brasil	Mexico
Family Farming	NBFC ¹ - Chap. XII	Sustainable Rural Development Law of 7/12/2001 - Chap. IV
Preserved forest area	NBFC- Chap. IV	GLEEEP ² - Art. 47-49
Right to social participation	There is no specific law	GLEEEP - Art. 157-159
Boundaries in land use	NBFC- Chap. II, Chap. III-A, Chap. IV	GLEEEP - Chap. IV
Exploration of the Coastal Zone	NBFC- Chap. III-A; Coastal Management Law N°7.661 issued on 16/05/1988	Federal Law of the Sea issued on 8/01/1986
Standards for installation of industrial zones	Law on Industrial Zoning in Critical Pollution Areas N°6.803 issued on 02/07/1980	GLEEEP - Art. 109- 109 bis 1
Mandatory Rural Environmental Registry	NBFC- Chap. IV	There is no specific law
Government support and incentives programs	NBFC- Chap. X	GLEEEP - Art. 21 - 22 bis
National parks and sanctuaries protection	Cultural Heritage Law N°25 issued on 30/12/1937	GLEEEP - Art. 50-56
Prohibition of using fire	NBFC - Chap.IX	General Law for Sustainable Forest Development issued on 25/02/2003 - Chap. IV
Punishment for law offenders	Law of Environmental Crimes N° 9.605 issued on 12/02/1998	LGEEPA - Chap. IV
Pesticides restrictions and controlled use	Pesticide Law N°7.802 issued on 11/07/1989	Federal Plant Health Law issued on 5/01/1994

¹NBFC: New Brazilian Forest Code

²GLEEEP: General Law of Ecological Equilibrium and Environmental Protection

As a result of the comparative analysis, it became clear that there are marked differences between the laws in both countries. While Mexico has an older law that focuses on the preservation of natural resources, legislation in Brazil is more realistic in that it recognizes that the exploitation of natural resources is an inevitable process, making its approach rational to regulate and design supervision and control mechanisms to prevent abuse. While in theory this may be desirable, in practice it is difficult to be realized. For example, CARVALHO (2013) found that according to the most optimistic scenario there will be 83% of illegal activities related to land use, compared to the previous legislation, which suggests that changes in in the Forest Code Law do not turn in environmental improvement by themselves.

5 CONCLUSION

Laws are passed according to the current situation in each country. Nowadays, Brazil is increasingly turning its attention to Agribusinesses, therefore its environmental laws could not but follow the same trend. Preservation and production are both mandatory, so these activities must be interwovenly linked. Brazil requires a clear land severe legislation as well as punishments that be actually enforced. Mexico, despite its increasing rise in the Agribusiness sector, legislation has turned over the preservation of its natural beauties, thus neglecting the environmental legislation related to the agricultural sector.

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