



Agricultural Investments in Latin America and the Caribbean

For U.S. and Canadian companies involved in the agricultural sector, advantageous opportunities exist south of the border

Many countries in Latin America and the Caribbean have well-developed and vibrant agricultural industries in the fields of farming, forestry and fishing among others. According to the U.S. Department of Agriculture, the annual agricultural trade between Brazil and the United States alone exceeds \$6.2 billion, and the annual two-way trade of agricultural products between

countries in the Dominican Republic-Central America-U.S. Free Trade Agreement (DR-CAFTA) is expected to meet or exceed \$5.0 billion.

There are many advantages to large-scale agribusiness investments in Latin America and the Caribbean. There are also many challenges. Companies considering expansion into the region should carefully weigh the pros and the cons.

One area of agribusiness receiving increasing attention involves transgenic crops.

“Every country in Latin America and the Caribbean has its own particular issues,” says Carlos Umaña Trujillo, a partner with Brigard & Urrutia, Lex Mundi’s member firm for Colombia.

These issues can be historical, cultural, geographic or legal in nature, and may require U.S. and Canadian in-house counsel to consider atypical factors. At the same time, bear in mind that many countries in the region are developing vibrant, stable economies.

For example, Umaña points to the unsafe conditions that once plagued Colombia because of the drug trade. Since 2002, that violence has been curbed dramatically. “That has allowed for an influx of investment,” he says. “We are in the middle of a golden era in Colombia.”

The same is true in many other countries, according to Miguel I. Gómez, assistant professor of applied economics and management at Cornell University. “The macroeconomic stability brought by the independence of central banks, the professionalization of monetary policies and the liberalization of capital and foreign currency markets have facilitated foreign investments,” he says.

In addition, costs are often low. “The costs associated with environmental regulation tend to be lower in the region than in the United States and Canada,” says Gómez. Production costs for land and labor are significantly lower as well, he added.

Nonetheless, in-house counsel should understand the issues of land regulation in the region, says José Setti Diaz, an attorney with Demarest e Almeida, Lex Mundi’s member firm for Brazil.

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Lex Mundi and its member firms publish many multi-jurisdictional publications including the Agribusiness Survey, “Requirements to Sell, Manufacture or Commercialize Transgenics, Insecticides, Pesticides, Herbicides and Rodenticides.” Visit the Publications and Resources web page at www.lexmundi.com.

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To understand those issues, it is important to be aware of some of the history of agriculture and land ownership in Latin America and the Caribbean. “Lawyers should look into the extent of reform in land tenure regimes,” advises Carmen Diana Deere, director of the Center for Latin American Studies and a professor in food and resources economics at the University of Florida.

In the 1960s, many governments in Latin America and the Caribbean set limits on the amount of land that a person or corporation could own—in some cases, this involved seizing land from foreign corporations. In the 1990s, most countries in the region passed agrarian reform as part of the neo-liberalism movement, according to Deere. However, some countries still retain strict limits on the amount of land that foreigners can own. These limits can greatly hamper agribusiness investment options for U.S. and Canadian companies that wish to pursue large-scale projects.

Rather than purchasing land and resources outright, many foreign companies consider renting land or investing in contract farming. “They don’t want to get embroiled in these situations again,” she says.

Financing is also an issue in agriculture, as it is in virtually every industry currently, according to Diaz. “Right now the markets are virtually closed, but we expect them to come back,” he says.

One area of agribusiness receiving increasing attention involves transgenic crops. Transgenics, or “GMOs,” genetically modified

organisms, have been modified in the laboratory through the introduction of genes from another species. They are intended to increase crop yields or to improve other characteristics, such as resistance to extreme climates, pests or herbicides. Believed by some to be the potential key to fighting hunger in the world, transgenics are, nevertheless, controversial. The contrarians argue that GMOs pose a threat to human health and the environment and may have other negative impacts. Many Latin American and Caribbean countries have now developed requirements and regulations related to transgenics that are important for in-house counsel to be aware of when considering agribusiness investments in this area.

The Lex Mundi Agribusiness Practice Group recently published a related multi-jurisdictional survey that addresses the issues of commercialization, government regulation, importing, exporting and human consumption of GMOs in countries around the world including many in Latin America and the Caribbean. The survey entitled “Requirements to Sell, Manufacture or Commercialize Transgenics, Insecticides, Pesticides, Herbicides and Rodenticides” is available to view at www.lexmundi.com.

The experts agree that, despite the challenges, Latin America and the Caribbean offer many opportunities for investments as long as companies do their homework and understand the pertinent issues. “Overall, the region is attractive for U.S. and Canadian investors interested in large-scale agricultural projects,” says Gómez.

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Challenges and Opportunities of Agro-Industry Projects

During 2008, Bolivia’s agro-industrial sector provided 10.44 percent of the country’s Gross Domestic Product, the equivalent to \$USD 1,800,475,857. The country’s cultivated surface is of 2,599,980 Km², covering 2.3 percent of its territory, while the country’s remaining land is still considered untouched. Inexpensive land and labor offered gives Bolivia the upper hand in comparison with its neighbors regarding agro-industrial opportunities.

Last year, Bolivia’s top agricultural products were soybeans and sunflowers and its derivatives totaling \$USD 605,588,000 in sales.

From a financial point of view, the Bolivian government and the banking sector have implemented strong programs to support medium and small-scale agricultural projects.

The new Constitution guarantees individual and collective property of land, subject to fulfilling an economical and social purpose. The law limits the properties extension to 5,000 hectares. Foreign citizens may not acquire land owned by the State, thus, they may enter into exploitation joint venture agreements with the State, or acquire land from private parties. The Constitution has also established a new Agricultural Jurisdiction.

Overview of Firm’s Agribusiness Practice

C. R. & F. Rojas - Abogados has specialized lawyers working in the agricultural sector. Our services are rendered to clients of different sizes, including transnational corporations as well as large, medium and small enterprises. We have worked in several agricultural activities including transgenic crops, agro-industrial services, fumigation, machinery leasing and maintenance, genetic technology, and raising cattle.

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Challenges and Opportunities of Agro- Industry Projects

Brazilian agribusiness became increasingly competitive worldwide and, nowadays, is a safe, profitable and affluent activity. Benefited by a diversified climate, Brazil is unparalleled globally in terms of land area potentially available for agriculture. Today, agribusiness is the main locomotive of Brazilian economy and accounts for approximately one third of national GDP. It is also responsible for the employment of 38 percent of the workforce, 36 percent of imports and 42 percent of exports.

Brazil is one of the global leaders in the export of agricultural products. In 2007, the main products exported by Brazil were chicken (58.5 percent), ethanol (52.0 percent), sugar (41.0 percent) and soybean (36.33 percent). The most important companies operating in this area were Bunge Foods, Cargill, Unilever and Souza Cruz; and the main exporters were Bunge Foods, ADM Brazil, Ambev and M. Cargill.

Among the main challenges impacting issues relevant to Brazilian agribusiness are the land ownership disputes, the uncertainty of genetically modified food and the search for procedures relating to the development of a sustainable environment capable of meeting the needs of the current generation without jeopardizing the future ones.

Overview of Firm’s Agribusiness Practice

The agribusiness department of Demarest e Almeida, co-headed by Rogério Cruz Themudo Lessa and José Setti Díaz, including lawyers from different areas of expertise, is able to render assistance on corporate, merger and acquisitions, real estate, contractual, environmental, litigation, regulatory (sanitary and phitosanitary regulations) and other issues related to the agribusiness.

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Challenges and Opportunities of Agro-Industry Projects

Agribusiness is one of Chile's main commercial activities, representing almost 10 percent of our GDP. Political stability with no general restrictions to land ownership, several free trades with the most important economies in the world, and governmental support—like irrigation support and financing, benefits to forestry, bonus to recuperation of eroded land and other activities—are key components of our development. Our country has fruit exportations up to 3 billion USD a year, with 324,000 hectares for growing fruit (number one exporter of table grapes and second in apples and avocados) and 160,000 hectares of vineyards (the fifth largest exporter of wine worldwide); we also export 25 percent of our milk production and are the sixth largest exporter of pork.

Our internal market is also strong. A recent law passed by Chilean Congress promotes non-conventional renewable and environmentally friendly energies, including biomass and biofuels, as privileged sources of electricity. This law requires that, beginning January 2010, electric companies will, each year, generate at least five percent more of their electricity using renewable energies. That percent of total electricity generated from non-conventional renewable energies will gradually increase until the electric companies meet a ceiling of 10 percent in 2024.

Overview of Firm's Agribusiness Practice

Founded in 1880, Claro y Cia. has always been active in the natural resources markets. Our clients are in energy, mining, fishing, forestry and agriculture. We represent clients, both in and out of court, with the most diverse interests connected with environmental and natural resources matters. Above all, our natural resources practice, like all work at the firm, has been designed to enable clients to accomplish their goals, minimize failures and stay out of trouble.

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Challenges and Opportunities of Agro-Industry Projects

Investment projects in the agriculture sector entitle the investor to obtain governmental soft loans and "Certificates of Incentive to Rural Capitalization," which represent a subsidy in a way of a lower value of the debt. In the event of forestry projects, the government issues "Forestry Incentive Certificates-FIC," which are subsidies to reimburse part of the investment. These benefits may be up to 75 percent of the loan or investment.

Forestry projects not eligible for FICs may be exempt from income tax. Furthermore, forestry investments may provide investors with a 20 percent credit on corporate income tax. Agriculture projects may be developed within Free Trade Zones, reducing the income tax rate to 15 percent and avoiding import taxes on the introduction of assets to such zones.

Foreign investors can execute Legal Stability Agreements with the Colombian Government in order to freeze certain rules for 20 years.

Certain minor restrictions may apply on the area of land that an investor may acquire pursuant to land reform laws. The rapid growth of agribusiness projects may further push towards more flexible regulations.

Overview of Firm's Agribusiness Practice

Based on 75 years of experience, Brigard & Urrutia abogados provides legal advice to our clients with respect to all related matters in the energy and agriculture sector, such as obtaining permits and licenses, review of the regulations applicable to specific projects, and legal review of the environmental management and land acquisition, among others.

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Challenges and Opportunities of Agro-Industry Projects

The Dominican Republic has traditionally been an agricultural country and is the largest exporter in the Caribbean of agricultural products such as sugar, rice, beans, coffee, cocoa and tobacco. The country is also becoming a major producer and exporter of organic bananas to Europe and the United States.

The advantages of pursuing an Agro-Industry project in the Dominican Republic include tax incentive laws for the development of renewable energy projects (biomass, ethanol, bio-fuels and others), special border zone development law and other incentive laws. The Dominican Republic has also entered into several key regional alliances and international treaties such as the Free Trade Agreement with the United States and Central America (DR-CAFTA) as well as the ACP-EC Cooperation with the European Community, which grants preferred access to these markets.

The main challenges faced by investors in Agro-Industry projects in the Dominican Republic are a lack of competitive financing, interest rates and insurance for agricultural projects and barriers to agricultural exports to foreign markets in the form of tariff-base quotas.

Overview of Firm's Agribusiness Practice

Pellerano & Herrera is the leading law firm in the Dominican Republic with the best legal solutions to the business needs of our clients. Our Agribusiness practice advises in all matters related to permits, licenses and sanitary regulations; governmental relations; environmental law; financing, real estate and land acquisition or leasing; litigation; and international trade regulations; among others.

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Challenges and Opportunities of Agro-Industry Projects

Peruvian climate and geographic location are two key aspects for Peruvian agriculture competitiveness in the international context. Out of the 108 types of climates existing in the world, Peru's territory shows up to 84 types, which permits the great diversity of crops, husbandry and forest species our fields offer.

Peru's location in the southern hemisphere is also favorable because it permits us to export farming products to the large consumption market in the northern hemisphere, namely United States, Europe and Asia, taking advantage of the season contrast between hemispheres.

In Peru, the land area suitable for clean and permanent cultivation is estimated in 8 million hectares, of which approximately 3 million are annually harvested. The Peruvian State has been executing irrigation projects such as Chavimochic project to improve irrigation and Olmos project that permits irrigation of at least 40,000 hectares of cultivation land with a high agribusiness potential.

Regulations aimed at promoting investment in agriculture and agribusiness have eliminated all restrictions on land ownership, price fixing for agricultural products, and state monopolies for the marketing of foodstuffs. Foreign investment is protected and foreign investors may enter into stabilization agreements with the government which guarantee the stability of currency, tax, labor and export laws.

Overview of Firm's Agribusiness Practice

Estudio Olaechea's agribusiness department is prepared to provide integral advice on a number of matters, including agrarian law, water legislation, real rights (rights in rem), health and administrative authorizations, regulatory (sanitary and phytosanitary regulations) and foreign trade, among others.

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