



## **Legal reserve: a senseless confrontation between agriculture and environment**

**By Marcos Jank**

In Brazil, there is a growing and senseless confrontation between agriculture and environment, because of successive and outdated legal predicaments that ignore the evolution, interdependence and immense potential of these two national giants.

Brazilian environmental legislation is extremely advanced and more conservationist than in many developed countries. Besides having the second-largest forest reserves in the world, second only to Russia, the Brazilian government has significantly increased the number of protected areas in the past decades, to include parks, biological reserves and permanent preservation areas, such as riparian forests. The true challenge is to guarantee the preservation of current forest areas, while eliminating illegality by increasing supervision and clearly defining property rights.

Brazilian agriculture has developed an effective set of technologies adapted to the tropical zone of the planet, transforming the sector into a global reference in terms of productivity gains. Examples include the current intricate diversity of food, feedstocks, fibers and bioenergy production in the South-Central region of the country, the successful integration of crops and livestock, no-till farming and the immense agroenergetic potential. This is a new era where traditional crops produce biofuels, bioelectricity and bioplastics, while contributing to petroleum substitution and the reduction of global warming.

There is a plethora of recent examples of irrational disputes between agriculture and environment. The majority of them are related to the distinct interpretations of the concept of "legal reserve" foreseen in the Brazilian Forest Code. Created in the 1930s, this concept was intended to preserve a quarter of pre-existing forests situated in private lands during a period of intensive agricultural expansion. The goal was to protect natural economic resources, such as wood, an important source of energy at that time. Thereafter, legislation on the issue changed many times, causing confusion and legal insecurity. Between 1996 and 2001, the Brazilian government edited and re-edited for 67 consecutive months, an interim measure, with different texts at every new publication. Since 2001, the interim measure remained unaltered and without the necessary vote for approval in Congress, a fundamental constitutional principle in a democratic state. In other words, an interim measure became law without passing Congress.

To make matters worse, the measure requires the producer to retroactively restore native vegetation in 20% of agricultural properties in most parts of the country, 35% of the "cerrado" region of Legal Amazonia, and 80% of the Amazon forests, without any compensation, financial or otherwise.

In states with an extended history of human occupation (South, South-East and North-East), there is not enough native vegetation left to meet the 20% target for legal reserves in every property. This forces producers to abandon parts of their plantations to reshape them with "islets" of native vegetation within each property. There is no similar requirement anywhere else in the world because it makes no environmental, economic or legal sense. The irrationality stems from the fact that



these "islets" never form integrated ecosystems and will dramatically reduce the property's economic efficiency.

The retroactive interpretation that has been given to legal reserves has the potential to compromise 3.7 million hectares of fertile land that has been cultivated for more than a century in the state of São Paulo, which means R\$ 5.6 billion (Brazilian Reais – approximately US\$ 3.2 billion) per year in revenue losses and an exponential increase in production costs and land prices. Moreover, the legal uncertainty prevails: without the official registration of the property's legal reserve, renewals for environmental licenses are not being approved, credit lines are being held up, property sales and rectifications are being denied.

Public suits are bringing legal charges against farmers, with heavy fines and injunctions confirmed by state courts. Simultaneously, the Attorney General has been pressuring farmers to sign Terms of Conduct Adjustment, with clauses of immediate abandonment of productive areas, thereby affecting business viability. Moreover, as of December 11th, Decree 6.514/08 will impose daily fines of approximately R\$ 500 (around US\$ 290) per hectare to all Brazilian agricultural activities for the lack of legal reserve annotation, a clearly disproportionate and confiscatory fine.

In conclusion, depending on how the issue is addressed, the losses for Brazilian agriculture could be far greater than those caused by persistent tariff and non-tariff barriers the sector faces abroad. It is sad to see anachronistic legislation that can transfer income, currency and jobs to other countries, which will surely enjoy this amazing form of self-inflicted punishment that we are imposing on ourselves. In essence, rules that ignore the concept of "sustainability" are formed by the clever combination of three factors: economic efficiency, environmental responsibility and social equity.

We should never accept such a dichotomy between agricultural growth and environmental conservation, because our "natural greatness" allows us to perform both more efficiently than any other region on Earth.

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