

Agribusiness Under Harassment

A well-performing agricultural sector is one of the main goals of the in office administration, as stated in the Colombian National Development Plan 2010-2014 entitled “Prosperity for All”. After more than three years, in the last stretch of this four-year government period, it is important to evaluate and assess to what extent this goal has been accomplished, in particular as refers to oil palm agribusiness.

Although the agricultural sector is among the economic drivers selected by the national government to push the economy and achieve greater prosperity to the Colombian people, figures show that its performance has not been the best. In fact, while the economy grew at an average rate of 4.8 % per year between 2010 and 2013, according to official statistics, agriculture barely grew by 2.6 % per year during the same period. Along these lines, agricultural subsectors tied to biofuels, considered the rightful drivers of this branch of production, have been showing moderate growth over the past few years, contrary to what was expected.

Government support and endorsement are usually required to provide new thrust to any productive sector in order to underpin privately led initiatives and enterprises with the right institutional framework and stable public policies, along with the participation of the respective producer associations. Over these past three years the approach regarding government actions and the agricultural sector, is that priority has been given to policies related to inequality and land ownership in the Colombian rural area. This is, undoubtedly of the greatest importance, but it

has meant that sectorial policies required to drive the various agricultural and livestock sectors that are critical sources of economic growth and wellbeing in the rural areas, have been set aside.

This has contributed to the perception among agricultural producers of the lack of a favorable environment for business and of the right conditions for undertaking productive projects that can really create new momentum for growth. On the contrary, the generalized feeling, supported by various signals, is that the government has an hostile attitude towards agribusiness, which could even be described as harassment against the organized agricultural sector in some instances.

Regarding the land issue, actions undertaken by the Colombian Rural Development Institute – INCODER – specifically under its previous administration, created the feeling of animosity against certain business groups that have had to face lawsuits filed by that Institution in relation to past land issues that had been legally settled and clarified. This outright biased attitude from INCODER in favour of small farming economy has rekindled old arguments regarding the agricultural development model and favoured the re-emergence of misguided prejudice from those who see small farming and agribusiness as being on two opposite sides. This has resulted in a situation where every single agricultural project led by the business sector is challenged, and the oil palm sector has not been an exception.

The situation is further agravated by the way in which certain State agencies have construed

the scope and application of Law 160 of 1994 as time has gone by, in the form of constraints on the acquisition of previously idle lands and unwillingness on the part of the government to shed light on this issue. This has practically brought decisions on investment in new productive projects to a halt and denies the possibility of reaching the economies of scale required to leverage the potential of certain crops in Colombia. Likewise, as part of the implementation of the Law, actions designed to protect the victims and effect land restitution by inverting the burden of evidence in the case of forced displacements, have given rise, in many instances, to a perverse situation that has nothing to do with the true sense of the Law. Consequently, alleged owners claim lands whose current owners purchased legally and in good faith. As a result of this, a new form of displacement is taking shape in some rural areas, with increased legal insecurity in relation to rural land ownership.

As for labor matters, the additional commitments entered into by this government with its American counterpart as consequence of the negotiations of the Free Trade Agreement (FTA) in order to pave the way for its approval by the US Congress, actually turn into new demands when it comes to hiring labor in some agricultural sectors including flowers, sugar cane, and oil palm. The underlying claim is the need to formalize the workers, but the truth is that they seek to promote unions among the workers in the more formal and better organized, agricultural sectors.

In this regard, many experts in the matter believe that Decree 2025 of 2011, which regulates Law 1233 of 2008, does not only exceed but violates the Law it should regulate, to the extent that, in practice, it weakens or stigmatizes the practice of hiring through the Associated Work Cooperatives (CTA), adopted in many productive sectors with very good results. Those results include increased formalization in a country where rural informality is greater than 60 %; promotion of entrepreneurship and labor organization; and increased productivity, highly needed in a mar-

ket that has to be highly competitive now that it is rapidly opening up to the international economy. In view of the above, the actions set in motion by the Ministry of Labor may be described as harassment, seeking the demise of the CTA through the imposition of outrageous fines to discourage producers and force them to hire workers directly. This creates labor inflexibility in a sector characterized by defined production cycles as is the case with agriculture, and results in higher labor costs.

As far as the unfair competition regulations are concerned, Law 1340 of 2009 establishes a clear exception for the agricultural sector. However, this law has not yet been regulated by the National Government through the Ministry of Agriculture and Rural Development, responsible for doing so. In the mean time, some agricultural sectors have been imposed fines and are under investigation without any regard for the peculiarities of the marketing of agricultural and livestock products, when it is precisely because of these peculiarities that many developed countries have excluded this sector from the application of unfair competition regulations. On the other hand, no regard has been given to the reality of the Colombian agricultural market, characterized in general terms by a fragmented supply structure with countless producers, and by an oligopsonistic demand with very few buyers, especially as pertains to raw materials. In the end, in the discussions of this matter with some government officials, the impression remaining in the air is that the agricultural sector *per se* does not want to apply the competition regulations or perpetuates informality when it demands special treatment, which of course is not true.

As far as biofuels are concerned, ethanol and oil palm biodiesel producers, and the agricultural subsectors that supply them with raw materials – sugar cane and oil palm – have been waiting for clear signals from National Government that it is really willing to meet its commitments regarding biofuel blends, in order to make the investments required to leverage Colombia's potential in this

area. It would seem, however, – from what has happened over these two years – that the National Government is unaware of the fact that biofuel production depends on the implementation of a National Biofuels Program. There have even been attempts of changing the rules of the game, creating not only greater legal uncertainty regarding the stability of biofuel production in the country, but also adverse effects on the sourcing conditions for raw materials such as palm oil.

Regarding the trade integration processes, agreements such as the Pacific Alliance signed between Colombia, Mexico, Peru and Chile, do not show any evidence of government willingness to defend local agricultural and livestock production. Despite multiple appeals from the representatives and spokesmen of the sector, including Fedepalma, it was impossible to ensure that the special conditions were taken into consideration during the negotiations related to agricultural products under the agreement. On the contrary, this is the first agreement signed by our country without even requiring the application of trade defence mechanisms designed to protect the agricultural sector. This is disconcerting, considering that such measures are part of the standards usually negotiated in a Free Trade Agreement for reasons known to all, according to which agricultural markets are often distorted as a result of domestic aid and

export subsidies provided to this sector, particularly in developed countries.

On the other hand, government accusations and generalized criticisms to the parafiscal tax funds of the agricultural sector are proof of the disregard for the importance of these resources as supportive to the provision of sectorial public goods, and of how the national government has chosen to ignore their benefits in terms of research, technology transfer, producer organization, marketing support, access to sectorial information, pest and disease management, and income optimization, among others.

The waning away of the Strategic Productive Alliances (APE) program which enabled many small farmers to join a profitable, long-term sustainable agricultural activity, as well as the constraints imposed on large producers in terms of financing tools such as the Rural Capitalization Incentive (ICR), help explain the slowdown of agricultural subsectors such as oil palm.

From this panoramic view we may conclude that, if Colombia is to leverage its potential and ensure job creation, advancement and well being in its rural areas, the attitude of the government needs to shift and focus on establishing clear sectorial policies and sound institutions designed to provide decisive support to the entrepreneurial efforts of the rural producers.