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DISCLOSURE

New Forestry Code calls for a proactive posture by the pulp and paper industry

One more chapter on the new Forestry Code has ended in mid-July: Congressmen and Senators from the Joint Committee approved Provisional Measure #571 with inclusion of many alterations to the original text version. The Provisional Measure (PM) was sent to the Congress after President Dilma Rousseff's veto to part of the bill approved by Congress members in the preceding month. However, the base text presented by reporting member Luiz Henrique da Silveira (PMDB-SC) still shall be voted by a plenary session of the House of Representatives and Senate in order to be approved or vetoed by the President. In total, 343 items of the main text have been altered.

Controversies and expectations apart, the forest-based industry is already certain of one thing: the new Code will call for a plethora of changes over the next five years. In this month's Interview, Pöyry's lawyer and environmental consultant, Pedro Toledo Piza, focuses on impacts of the changes and makes a critical analysis of the pulp and paper sector posture. "If we maintain this reactive behavior, we run the serious risk of suffering from the Code ambiguities," he warned.

"The pulp and paper sector must be at close attention since, in some situations, it might become a hostage to the environmental authorization and license bureau", stresses Toledo Piza

O Papel – What are the main changes in relation to the original version of the text that have a direct impact on the pulp and paper industry?

Pedro Toledo Piza – There is a series of changes – some very sensitive, others less so – for the pulp and paper sector. When the new code determines, as an example, the need of compensation with the purpose of preserving threatened species as a condition for the authorization of suppression of vegetation, the sector will have to get mobilized not only to try to adapt itself, but also to understand what all the matter really means. Even though new pulp and paper mills are sustainable, the environment ends up being altered, thereafter adding to the other industrial sectors. This will certainly demand for a continuous updating of the endangered species list. If compensatory and mitigating measures that ensure protection to endangered species will also be applicable to the pulp and paper planning, Article 27 of the Code will act in a cumulative way in relation to other environmental compensations today already fulfilled. The sector is performing a huge effort and isn't recognized? I believe that there exists a legal insecurity in rules that only engender burdens. This is just the first example that I would like to point out for the search of an institutional action - something of paramount importance at this moment - in order to seek explanations, proposition of proactive solutions, and anticipation to the Code regulation.

O Papel – Will many other changes have to be made in order to comply with the new rules?

Toledo Piza – Yes. The scenario is that of a series of changes that will lead to a regularization process over the next 3 to 5 years, thinking optimistically. Another example that may cause a strong impact on the pulp and paper sector refers to the demarcation of Permanent Preservation Areas (PPAs). Although it provides the possibility of PPA's adjustments, the new Code congregates two parameters: the width of the river and the rural module (Article 4). However, the rural module varies according to the State, that is, the situation becomes complicated in cases where farms are established in municipalities of different States, since there would be two distinct definitions. This legislative change may cause readjustment costs in order to receive FSC certification, which requires legal compliance with Principle 1. There is also the risk associated to Article 6, referred to formation of PPAs by decision of the executive branch, which may freeze plantations in certain municipalities. To make things worse, Paragraph 17 of Article 61 establishes the need of recovering at a rate superior to that defined by law. In summary, I consider the initiative of the Code very interesting, the effective consequences of which will be felt over the next years, until environmental entities pacify their interpretations. Even if already voted, there are many points that lack regulation. It is necessary to define interpretation limits in order to determine how far government can go in terms of negotiations with landowners and stipulate deadlines not conflicting with prior commitments.

O Papel – But such ambiguities in the Code, are they posing any danger to the pulp and paper industry?

Toledo Piza – If the sector adopts a reactive posture, yes. What I mean is that there are ways to comply with the new rules, but it is due to take the first step rather than wait for a government initiative. Once the Code enters into force, the government can act in two ways: await forestry sector players to start with an adaptation process or adopt a proactive attitude, jointly discussing ways to comply with the new requirements. I don't really believe in the second option, since this is not the kind of posture you see in Brazil, particularly on the part of the public prosecutor's office and its well-known coercive official letters with tight deadlines. What can happen is a company to be impelled to adjust at the moment of licensing properties and having, for example, to make a compensation to protect endangered species as a prerequisite for obtaining authorization for vegetation suppression. Since companies need licenses and need to operate their forests, they should take the first step. My suggestion, therefore, is an appeal to the sector and other players in the forest-based industry to work out an institutional articulation for the ruling of the Code.

O Papel – How do you see this mobilization on the part of the pulp and paper sector at present? Are companies monitoring the voting? Are they worried about the new text? Do they fear they will have to undergo major restructuring processes?

Toledo Piza – I see companies committed with the theme, but, unfortunately, in a very shy style. There should be a somewhat more effective posture in the sense of participating more actively in discussions and proposing solutions. The case of these pending issues regularization is an example. To avoid problems in the future, the ideal is the sector taking the first step. In fact, I believe the bill to be paid belongs to all sectors making use of forestry raw materials, not only the pulp and paper sector is the one to be charged. Therefore, the forest-based industry as a whole will have to make efforts for adapting to the new Code. This debit cannot be paid by just one sector.

O Papel – Do you believe that because the pulp and paper industry presupposes itself as a benchmark segment in complying with the current legislation, the sector motivates a certain amount of complacency in relation to the new regulation?

Toledo Piza – I don't think so. The tradition of our sector shows us that companies never can settle down. On the other hand, there exists a certain tendency to adopt a reactive, dangerous posture in this case, since, many times, it is necessary to handle a grenade bigger than expected. It is under discussion, for example, the requirement of companies utilizing forestry raw materials to implement a sustainable development plan to be submitted for approval to the environmental agency. The pulp and paper sector is recommended to keep a close eye on situations like this because, in some cases, it could turn out as a hostage to the bureau of environmental authorization and licenses.

O Papel – What is your expectation about the next steps for the Code definition? Do you envision a forest-based industry different from the current one within the next 3 to 5 years?

Toledo Piza – Yes. One can already see significant changes, which tend to intensify. In 2005 scenario, for example, the pulp and paper industry worked with a more expressive proportion of owned land in relation to that managed by third parties. This reality has persisted changing until now, that is, lands of third parties have been gaining share in the area of effective planting. With the new Code, this strong developing trend may change, since the need to normalize unsettled matters is not that simple. Companies that need to certify the custody chain will end up sustaining such onus referred to third party areas, which, in case having pending matters, may generate bad consequences to the contractor, increasing the pulp and paper production cost. Therefore, there is need to reach a consensus on the matter and identify adequate ways for normalizing things. This is why I stress the importance and need for an institutional articulation, so that an environmentally and socially committed sector will not undergo a still heavier charge. Lastly, I draw attention to the horizon presented by the new Code, which should be grounds for discussion: payment for environmental services, legal reserve administration fees, PPAs vegetation suppression and environmental reserve quota (formerly CRF), areas consolidated into PPAs. This is a long discussion, and our sector has some serious homework to do in regulating the Code. Let's then roll up our sleeves and get to work! ■