

**Conference on the Global Food Value Chain: Competition Law and Policy at
Crossroads**

**Brazilian Food Value Chain and Competition Policy:
an Overview on CADE's Role**

Alessandro Octaviani

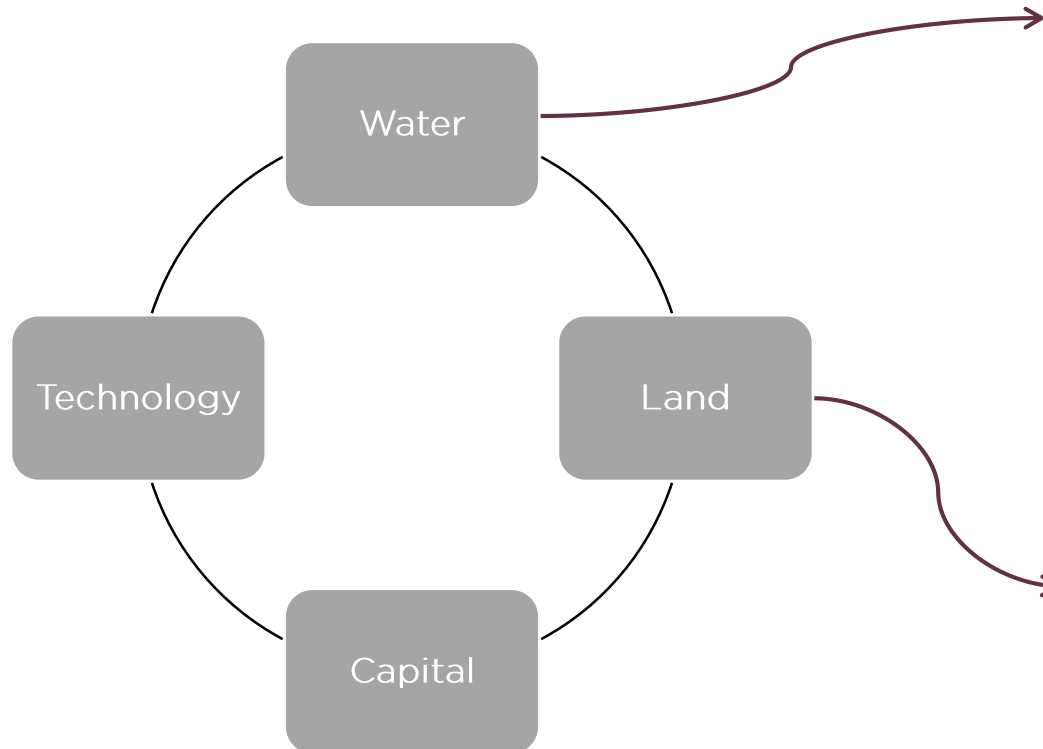
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Summary

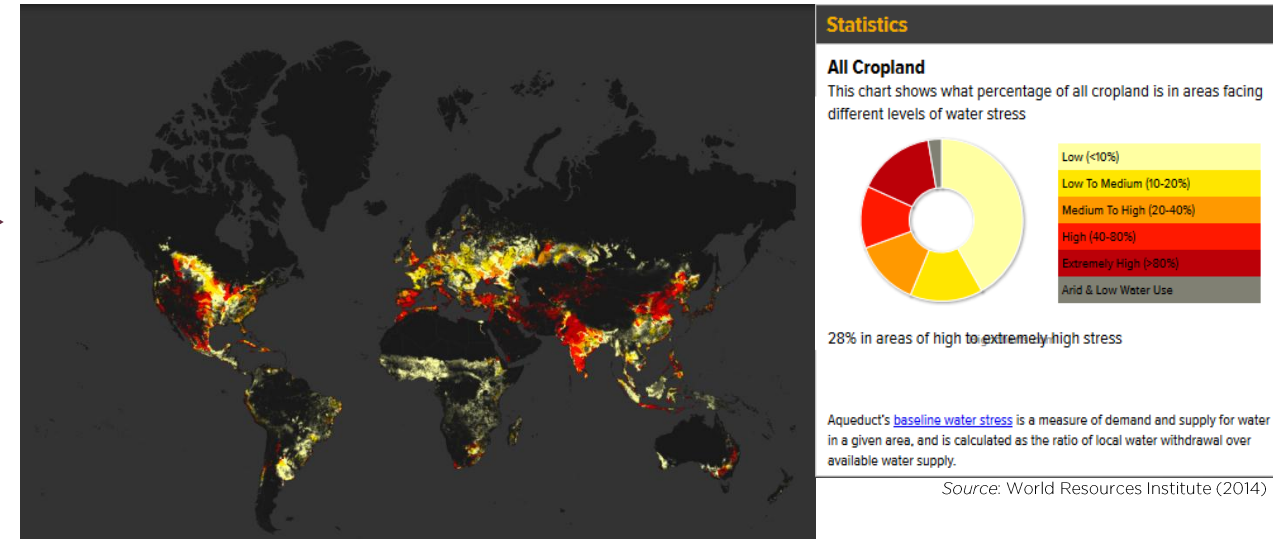
1. Critical Factors;
2. Food Production Competition (CADE);
3. Biotechnology: Seed market (CADE);
4. Meat Production Market (CADE);
5. Food Production and International Competition: Subsidies and CFIUS.

Critical Factors

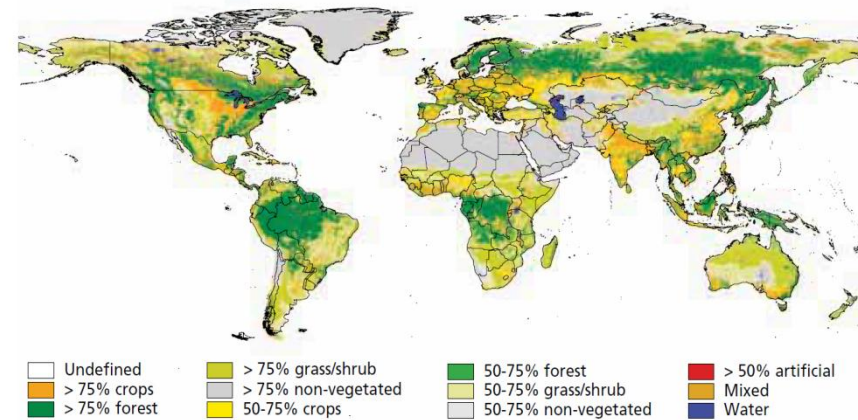
Food Value Chain: Critical Factors



Agriculture exposure to water stress



Dominant Land Use and Cover

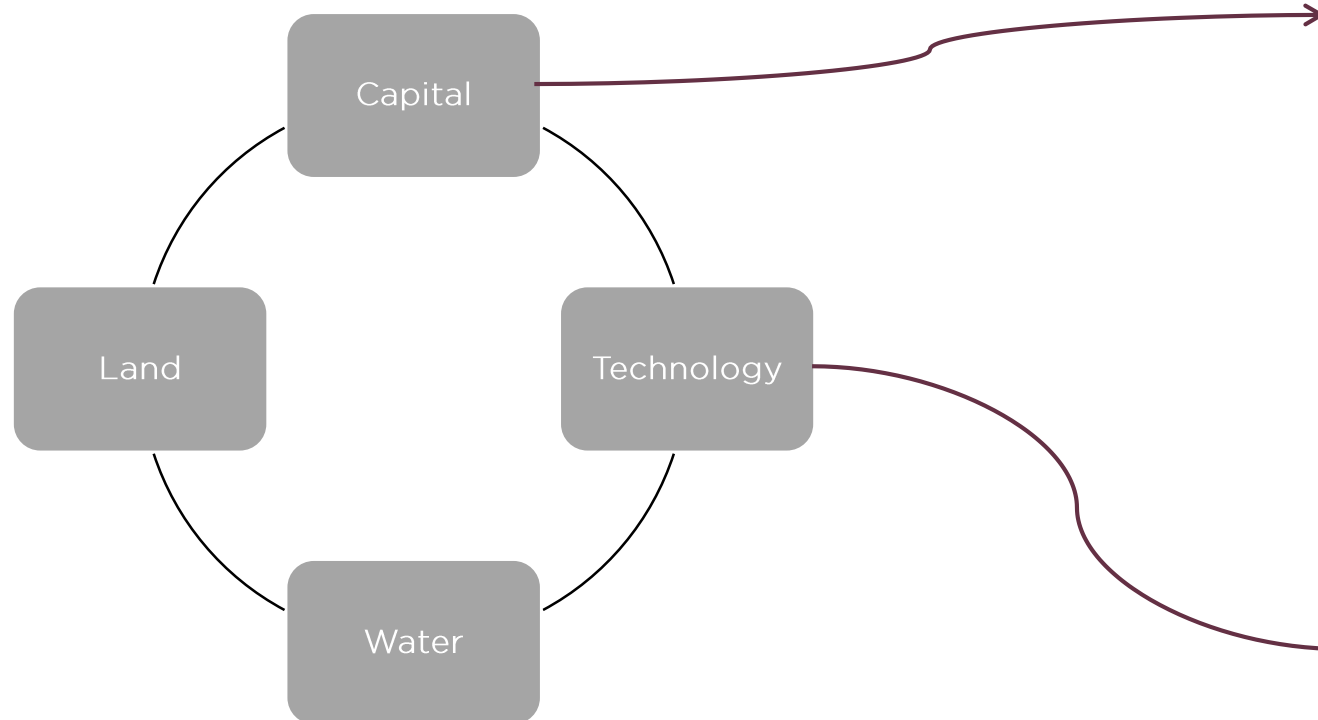


Source: FAO, 2011a

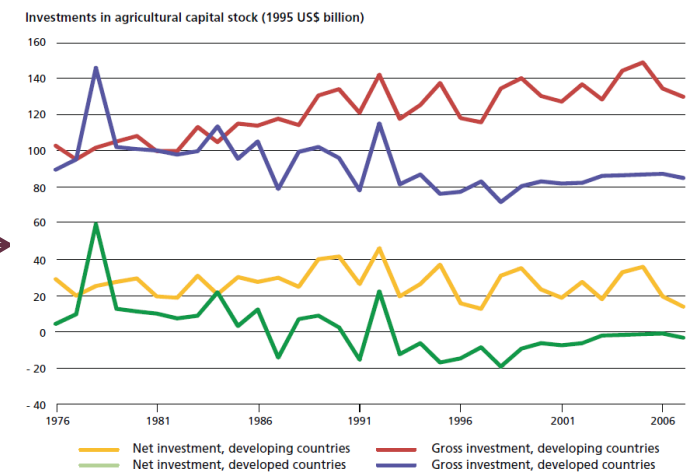
Critical Factors

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Food Value Chain: Critical Factors

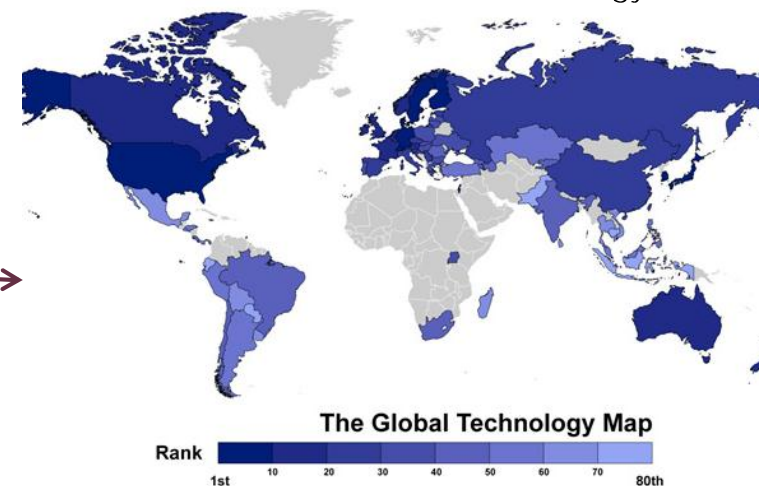


Gross and net investments in the agriculture capital stock, developing and developed countries



Source: FAO (2011)

Global Technology Index

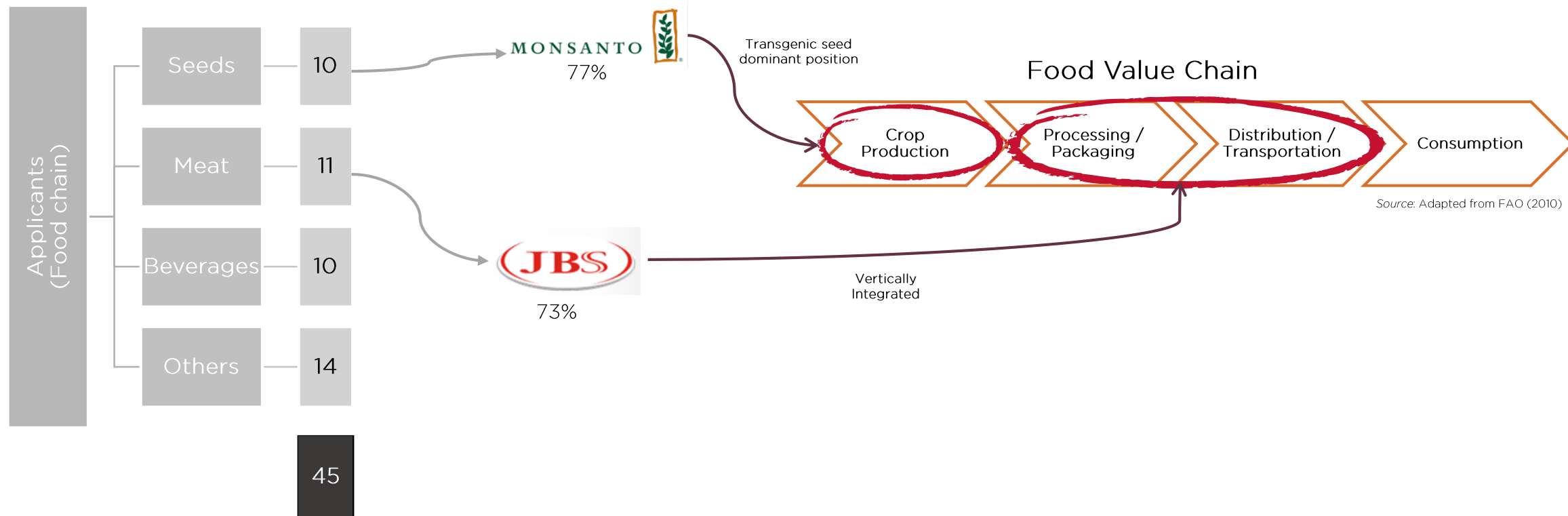


Source: FLORIDA, Richard (2011)

Food Production Competition (CADE)

Food Value Chain: Brazilian Antitrust Authority's decision pattern

CADE's Tribunal Decisions (2012-2016)

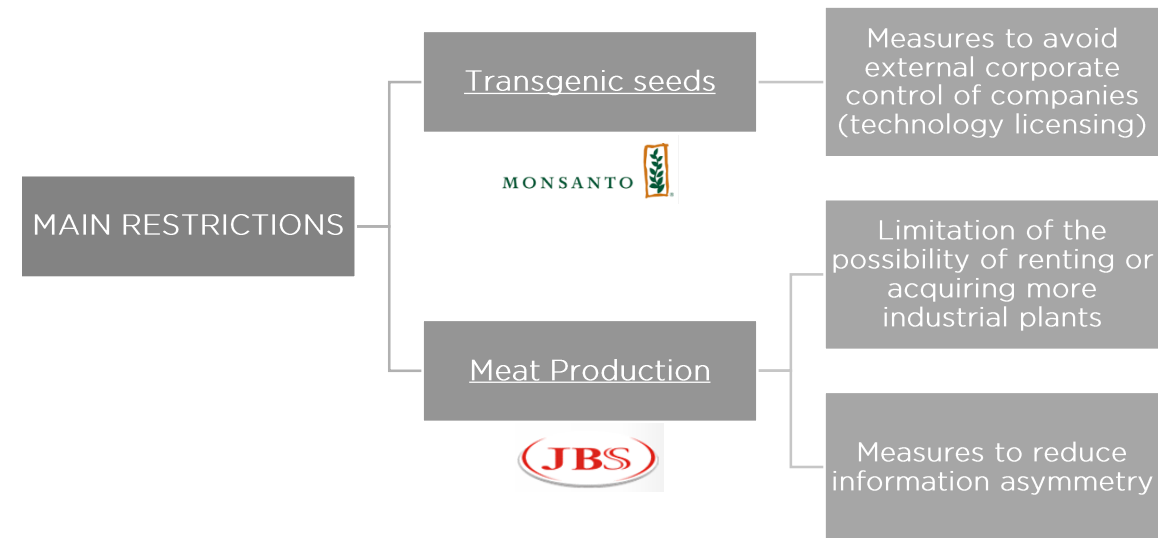


Food Production Competition (CADE)

Food Value Chain: Brazilian Antitrust Authority's decision pattern

CADE's Tribunal common restrictions regarding food value chain

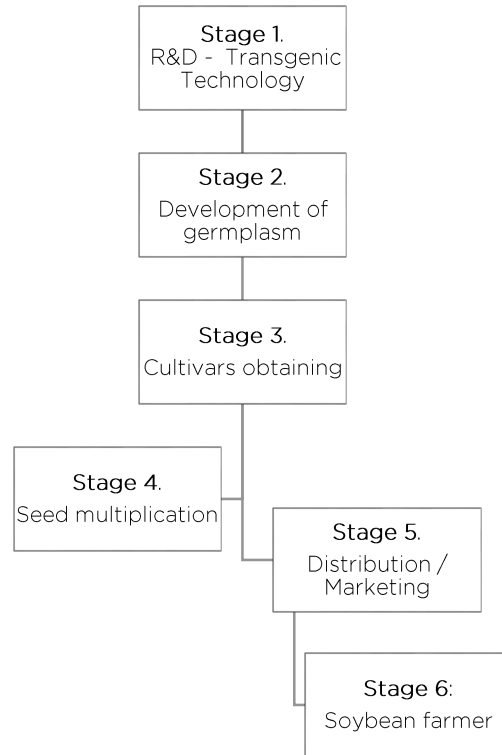
- CADE's Law (12.529/2011): premerger control system
- General Superintendence ("trial court") apart from the Tribunal ("court of appeal")
- Tribunal: administrative instance where complex economic issues are addressed and the only with authority to disapprove a transaction or determine conditions for its approval



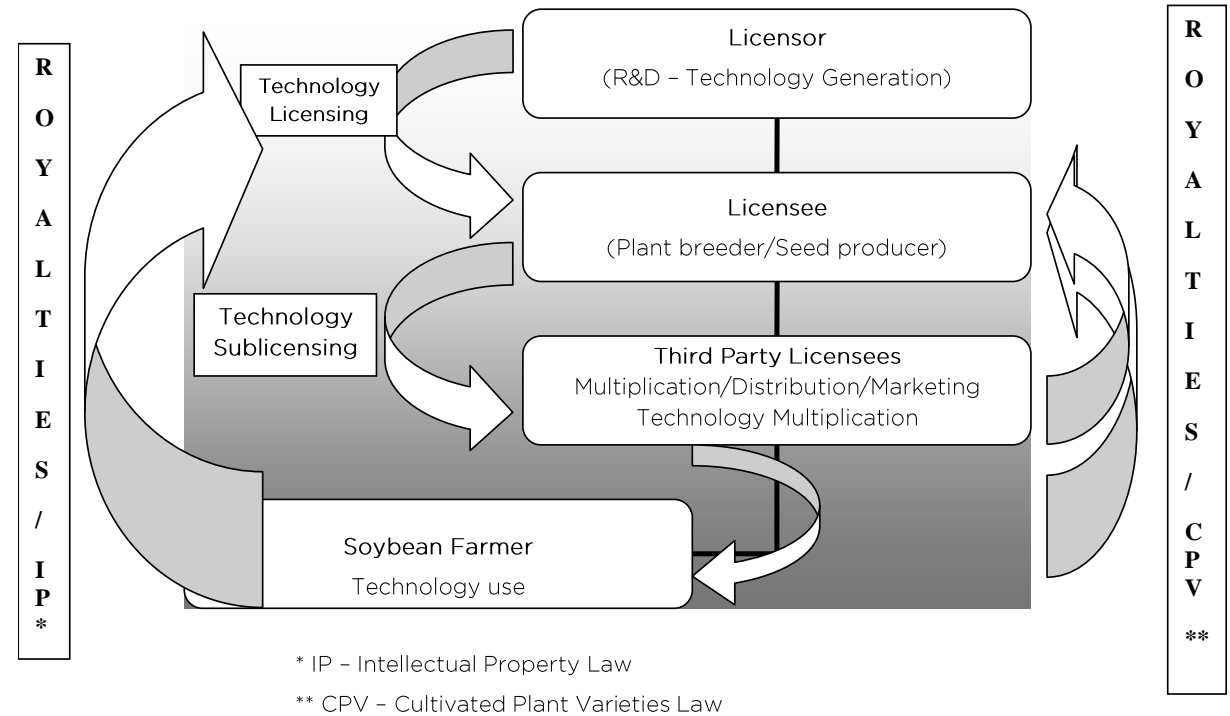
Biotechnology: Seed market (CADE)

Food Value Chain: Technology as a relevant competition element (Monsanto cases*)

Transgenic soybean productive chain



Royalties stream on the transgenic soybeans production chain



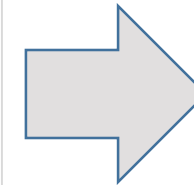
Biotechnology: Seed market (CADE)

MARKET SUMMARY	
1.	Technology conceiver (Stage 1) does not receive any financial considerations to license his transgenic technology to the plant breeder (Stage 2).
2.	Technology conceiver depends on the breeder to put his technology on the market.
3.	Licensor's profits rely necessarily on (i) breeder's and (ii) distributor's success.
4.	Even though the development of new cultivars does not require transgenic technology, transgenic seeds are highly demanded in the soybeans market.
5.	Monsanto technologies (RR1 and RR2 PRO) are the only transgenic technologies available for the soybean market in Brazil.
6.	The parties profits depend on the commercial success of the seed produced by the combination between Monsanto's technologies and the licensees' germplasm.
7.	Considering its power over the market, Monsanto's practices are dominant within the market.

Considering these conclusions regarding the soybean market in Brazil, even *Non-exclusive Technology Licensing Agreements* (involving Monsanto's Technologies) are analyzed as **Association Agreements**, since they present:

- ✓ Shared commercial interests
- ✓ Practice of a common enterprise
- ✓ Coordination of business activities
- ✓ Risk sharing

These features allow Monsanto to exercise **external corporate control** over its licensees (thus those agreements are mandatorily notified before CADE)

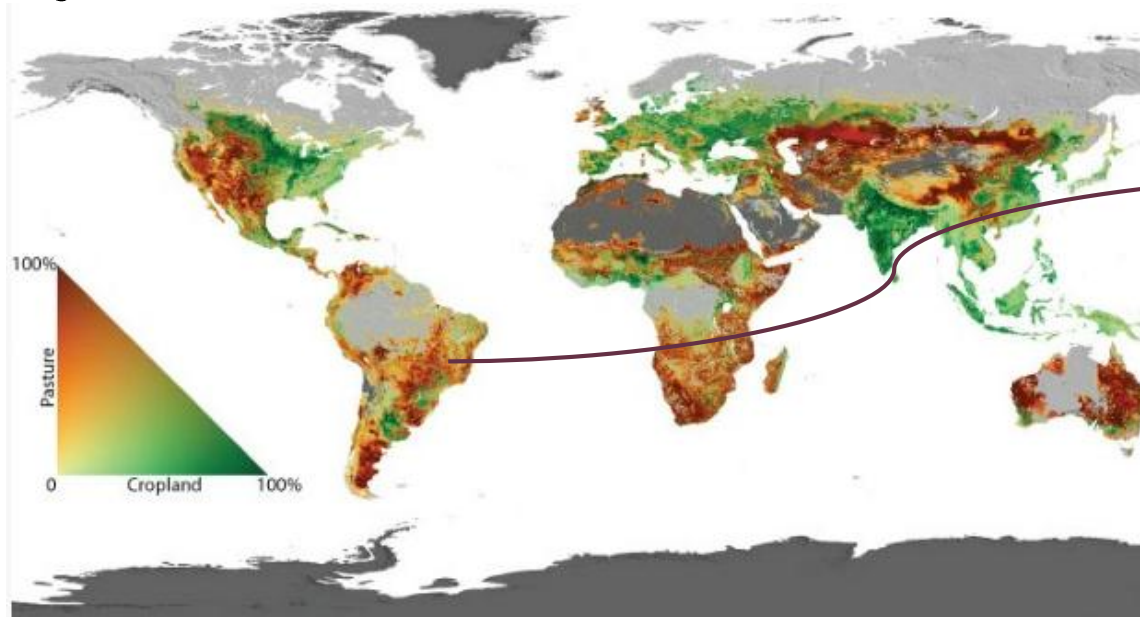


Brazilian Antitrust Authority imposed restrictions to all clauses that allowed Monsanto to externally influence its licensees

Meat Production Market (CADE)

Food Value Chain: Competition dynamic on meat production and exportation market (JBS cases*)

Agricultural Lands of the World



Source: http://www.mcgill.ca/newsroom/news/item/?item_id=202006



JBS: competitive advantages

Global leader on meat processing and exportation

Industrial plants: great size and geographical distribution

Strong brand as a source of differentiation (Friboi)

Vertical integration

Financial capacity

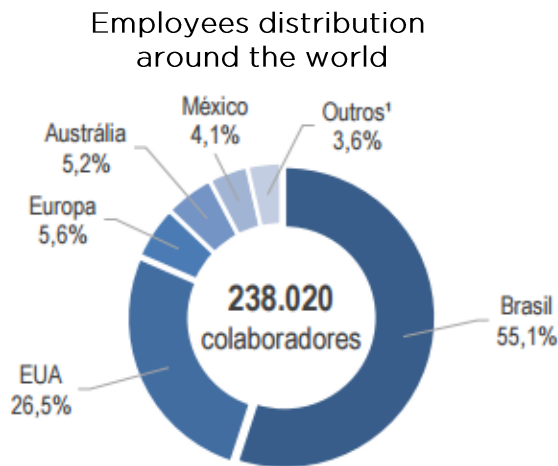
Export capacity

Access to big retailers

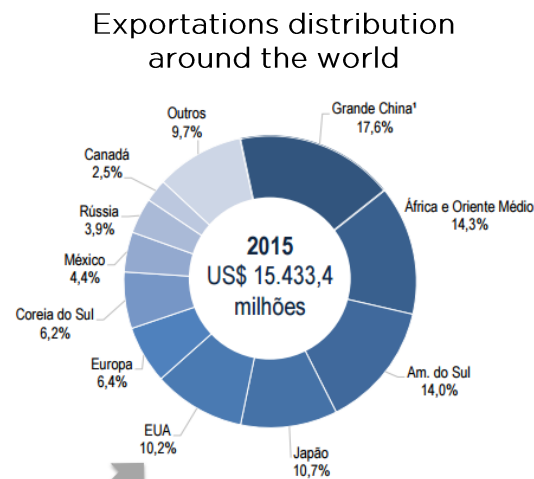
Meat Production Market (CADE)

Food Value Chain: Competition dynamic on meat production and exportation market (JBS cases)

JBS Statistics



Source: JBS Administration Report 2015



Source: JBS Administration Report 2015

Competitive Issues Regarding the Market

Only the biggest players are entitled of those competitive advantages, which entails their possibility of operating in a monopoly regime

Those big players became market leaders by the **acquisition** of competitors' industrial plants (exogenous growth)

However, those acquisitions were not accompanied by a proportional raise on production, revealing a strategy of raise of idle capacity

Pattern of restrictions imposed by CADE

Prohibition of renting / acquiring new industrial plants in states where the Market share reaches a certain percentage (confidential)

Obligation to notify CADE about all upcoming industrial plants leases and acquisitions, whether they are active or inactive units

Prohibition to decrease production level of the industrial plants acquired on the Operation analyzed by CADE

Food Production and International Competition

Food Value Chain: International legal strategies to compete with Brazilian capacity

- Europe and US utilize legal mechanisms to protect themselves against Brazilian commodities exportation capacity:
 - *Subsidies*
 - *CFIUS*

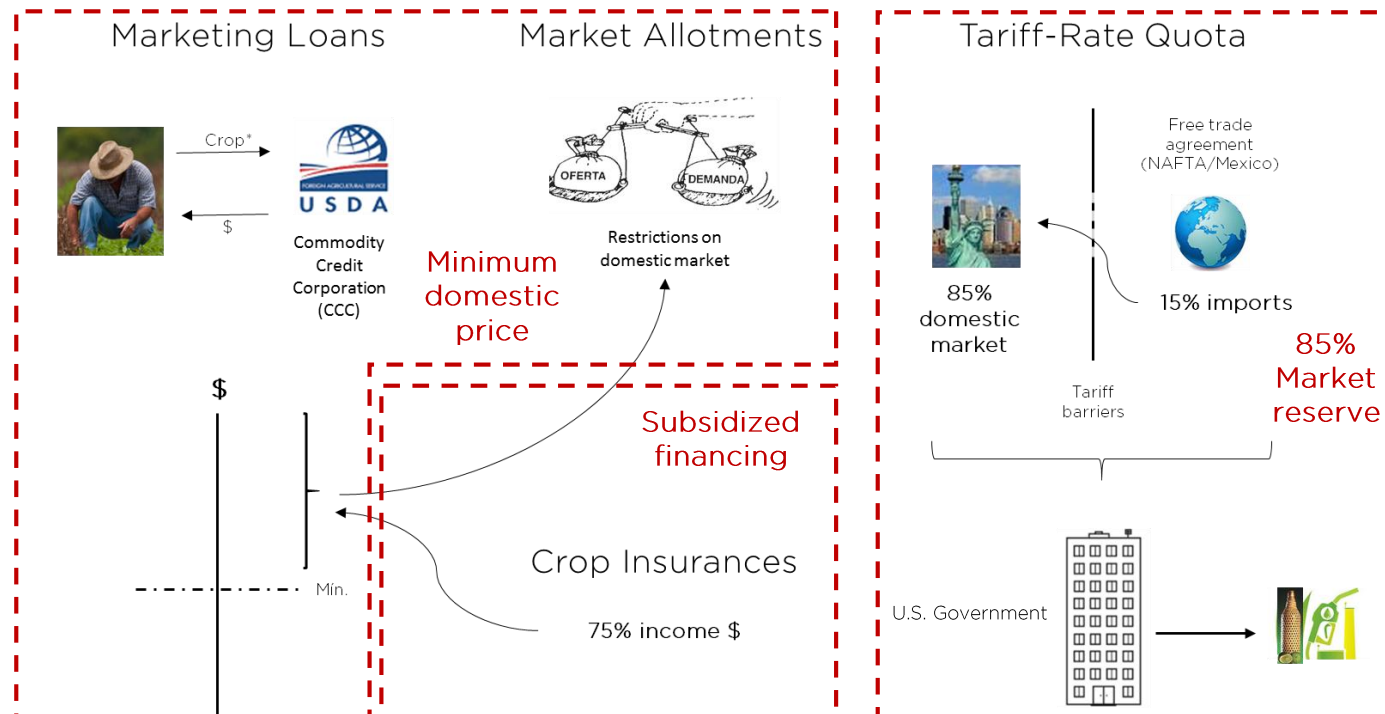
Food Production and International Competition

Food Value Chain: International legal strategies to compete with Brazilian capacity

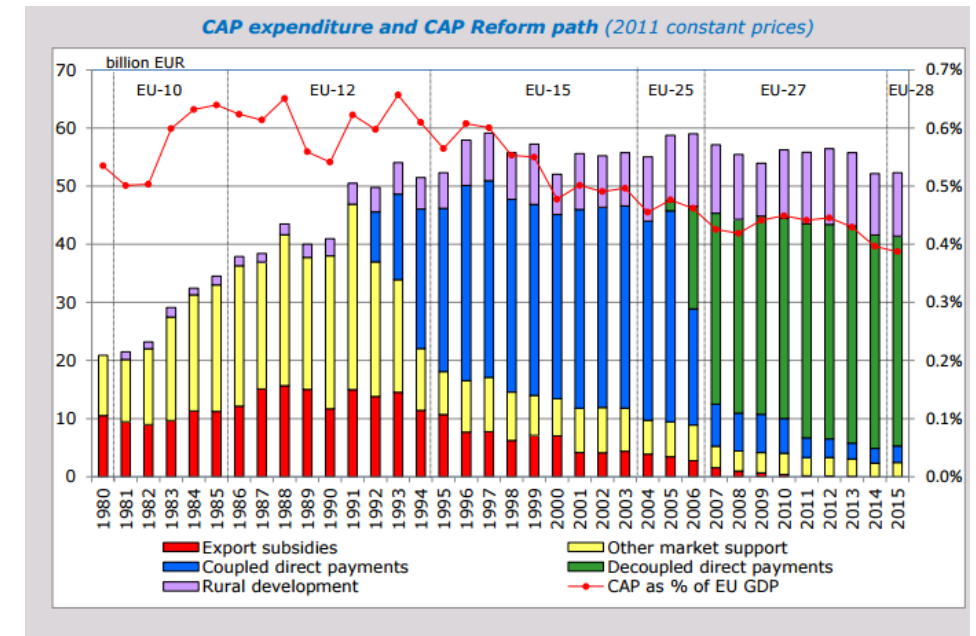
- Subsidies

- Uruguay Round/GATT (1995)*: signing of specific International Treaty regarding agriculture aiming at international commerce liberalization.
- Even though legal instruments have grown more complex (simultaneous use of different mechanisms), subsidies are still granted in high amounts.

USA Sugar Regime (2014 Farm Bill)



2013 Reform: UE Common Agricultural Policy (CAP)



Sources: CAP expenditure: European Commission, DG Agriculture and Rural Development (Financial Report). GDP: Eurostat. Annual expenditure in 2011 constant prices.

Food Production and International Competition

Food Value Chain: A critical sector for CFIUS' reviews

- *Committee on Foreign Investment of the United States* – CFIUS
 - *Function*: Review transactions by which a foreign company acquires the control of an American company
 - *Structure*: The Committee consists of 9 voting members, 2 non voting members and 5 observers (with powers to suggest the US President to **prohibit** the transaction – in case of national security imperatives). There are 16 critical sectors for CFIUS' reviews, which include: (i) communications; (ii) energy; (iii) financial services; and (iv) **food and agriculture**.
 - *Efficacy*: Brazilian takeovers within the food value chain has gained recognition over CFIUS (JBS acquisitions of Swift & Co. and Pilgrim's Pride Corp.; and Marfrig Alimentos purchase of Keystone Foods).

Foreign Investment Transactions Reviewed by CFIUS, 2008-2014

Year	Number of Notices	Notices Withdrawn During Review	Number of Investigations	Notices Withdrawn During Investigation	Presidential Decisions
2008	155	18	23	5	0
2009	65	5	25	2	0
2010	93	6	35	6	0
2011	111	1	40	5	0
2012	114	2	45	20	1
2013	97	3	48	5	0
2014	147	3	51	9	0
Total	782	38	267	43	1

Source: Annual Report to Congress, Committee on Foreign Investment in the United States, February 2016.

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THANK YOU!

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