

SASB Public Comment Submission

Paul Rissman
19 December 2017

Sector: Food and Beverage
Industries: Agriculture; Processed Foods; Non-Alcoholic Beverages; Alcoholic Beverages; Meat, Poultry and Dairy

Sector: Renewables
Industry: Biofuels

Issue: Harmonization of disclosure: Sourcing of sugar and/or soy and/or beef and/or palm oil from Brazil and other countries

Brazil is the world's largest exporter of sugar, and ranks second in beef and soybean exports.¹ The nation has experienced a concerning deterioration in the rule of law regarding relations between agribusiness and indigenous groups. In August 2016 Michel Temer, heavily backed by agribusiness, succeeded Dilma Rousseff as the Brazilian president. Since that time, indigenous protections have been weakened by, for example, cutting funding for FUNAI, the government agency responsible for indigenous rights, by 40%,² leading to the closing of regional offices and protective bases.³ In addition, the anthropologist that led FUNAI was replaced by an evangelical pastor,⁴ and a congressional commission led by Temer's allies has recommended that the independent agency be placed under the control of the justice ministry, and also called for the prosecution of up to 80 FUNAI officials.⁵

A parallel and related development has been a troubling series of reports of human rights violations, some involving U.S. issuers. Displacement of indigenous people in favor of sugar cultivation and milling has been reported in the states of Pernambuco and Mato Grosso do Sul, in the latter case involving Bunge, Ltd.⁶ Mato Grosso do Sul has also seen violent conflict between indigenous populations and industrial soy farmers,⁷ as well as ranchers.⁸ Rancher/indigenous conflicts have also been reported from the state of Maranhão.⁹

¹ <https://globaleedge.msu.edu/countries/brazil/tradestats>

² <http://www.bbc.com/news/world-latin-america-39944744>

³ "Brazil's indigenous people outraged as agency targeted in conservative-led cuts." The Guardian, 10 July 2017.

⁴ <http://www.valor.com.br/international/news/4866532/new-head-funai-wants-make-indigenous-peoples-more-productive>

⁵ <http://www.bbc.com/news/world-latin-america-39944744>

⁶ https://www.oxfam.org/sites/www.oxfam.org/files/bn-sugar-rush-land-supply-chains-food-beverage-companies-021013-en_1.pdf

⁷ <https://www.theglobeandmail.com/news/world/brazil-indigenous-land/article34628966/>

⁸ <http://amazonwatch.org/news/2013/1024-brazils-indigenous-tribes-are-being-hunted-by-murderous-cattle-ranchers>

⁹ <https://www.telesurtv.net/english/news/Brazilian-Cattle-Ranchers-Brutally-Attack-Indigenous-Tribe-20170501-0023.html>

Commented [p1]:

Multi-lateral groups have taken notice. The United Nations Special Rapporteur reported, “Against this backdrop, Brazil should be strengthening institutional and legal protection for indigenous peoples, as well as people of African heritage and other communities who depend on their ancestral territory for their material and cultural existence,” the experts stated. ‘It is highly troubling that instead, Brazil is considering weakening those protections.’”¹⁰ The European Union is insisting on indigenous rights protections in its ongoing treaty negotiations with the Mercosur trade bloc. As reported by Mongabay, “It will be the first time that human rights clauses – specifically indigenous human rights – will be included in a trade agreement between the Mercosur trade bloc (Brazil, Argentina, Paraguay and Uruguay) and the European Union. This is according to Francisco Assis, Chair of the European Parliament Delegation for relations with Mercosur, who spoke at a meeting in Brussels, 20 November 2017...At the most extreme, failure to uphold the human rights stipulations included within the EU-Mercosur trade agreement could result in trade embargoes against Brazil. If the clauses are broken, citizens in Europe can write to their MEPs who can hold national governments to account.”¹¹

It is evident that Brazil’s major agricultural exports, including sugar, beef, and soy, embody risk of both supply disruption and reputational damage for U.S. companies that import these commodities. Agribusiness/Indigenous conflict and other human rights violations in agricultural commodity production have also recently been documented for cattle ranching in Mexico,¹² Venezuela¹³ and Kenya¹⁴ (“The industry’s largest companies, including Tyson Foods, BRF S.A., and Hormel Foods, have international operations.” Industry brief p.3); soy in Argentina¹⁵ and Paraguay,¹⁶ and palm oil in Peru¹⁷ and Guatemala.¹⁸ Regarding the palm oil disputes, the Peruvian case led to a stop-work order issued to Plantaciones de Pucallpa (parent company: United Cacao (LSE)) by the Roundtable on Sustainable Palm Oil. The Guatemalan case resulted in a suspension of purchases from the accused company, REPSA, by Cargill, after a naming and shaming campaign by Friends of the Earth.¹⁹ These conflicts may affect supply chains and

¹⁰ <http://www.un.org/sustainabledevelopment/blog/2017/06/indigenous-and-environmental-rights-under-attack-in-brazil-un-rights-experts-warn/>

¹¹ https://news.mongabay.com/2017/12/latin-america-europe-trade-pact-to-include-historic-indigenous-rights-clause/?n3wslatter&utm_source=Mongabay+Newsletter&utm_campaign=2ab3a22a0c-newsletter_2017_12_15&utm_medium=email&utm_term=0_940652e1f4-2ab3a22a0c-77154965

¹² <https://mexiconewsdaily.com/news/wixaritari-land-battle-could-become-violent/>

¹³ <https://venezuelanalysis.com/analysis/7524>

¹⁴ <https://www.economist.com/news/middle-east-and-africa/21717067-politicians-are-urging-their-supporters-graze-their-cows-other-peoples>

¹⁵ <http://upsidedownworld.org/archives/argentina/land-conflicts-in-argentina-from-resistance-to-systemic-transformation/>

¹⁶ <http://pulitzercenter.org/reporting/soybean-wars-land-rights-and-environmental-consequences-growing-demand>

¹⁷ <https://news.mongabay.com/2016/05/rspo-orders-peruvian-palm-oil-plantation-stop-development/>

¹⁸ <https://business-humanrights.org/en/guatemala-cargill-repsa-acknowledge-need-to-prevent-abuses-related-to-toxic-spill-of-palm-oil-other-companies-yet-to-respond#c138045>

¹⁹ <https://foe.org/news/agribusiness-giant-cargill-suspends-contract-controversial-guatemalan-palm-oil-producer-environmental-human-rights-violations/>

reputations of agriculture and processed food companies (all commodities in question), alcoholic beverage companies (sugar for rum and other products), non-alcoholic beverage companies (sugar), meat processors (to the extent that they operate internationally) and even biofuels companies (“The largest producers of ethanol are the U.S. and Brazil, accounting for 60 and 25 percent of the world’s production in 2014, respectively...Brazil chiefly uses its large domestic supply of sugarcane as a feedstock... Some agricultural producers may also be vertically integrated with the biofuels segment. For example, Archer-Daniels-Midland (ADM) generated almost \$8 billion from the Biofuels industry in 2014. While this amount represents just under 10 percent of the company’s revenue, it still puts ADM at the top of U.S.-listed companies”²⁰). Since these issuers have the same risks in common, language around the social risks of commodity supply chains should be standardized across industries and sectors, thus aiding investors in assessing not only company-specific risk but also allowing for comparison among industries with similar risk characteristics. Moreover, companies that operate in a number of these segments, such as PepsiCo, would see the benefit of a single reporting scheme.

In this regard, there is much variation in the standards of the sections generally entitled, “Environmental & Social Impacts of Ingredient Supply Chains”. For example, Agriculture contains a standard called, “Description of management strategy for environmental and social risks arising from contract growing and commodity sourcing”. In contrast, both Food Processing and Beverages (Non-alcoholic and Alcoholic) have a standard called, “List of priority food [beverage] ingredients and discussion of sourcing risks due to environmental and social considerations”. The language of the two standards seems relatively similar. The standards should be given the same title and identical language.

Another variation concerns the circumstance that both Agriculture and Processed Foods have a standard called, roughly, “Percentage of raw materials [food ingredients] sourced that are certified to third-party environmental and/or social standards, by certification scheme”. There is no such standard for the Beverage (Non-alcoholic or Alcoholic) industry.

Third, there is no standard for auditing human rights issues in the supply chains of the Biofuels or Meat, Poultry and Dairy industries, despite the possibility that companies may be purchasing ethanol or beef from Brazil and other contentious regions.

Sector: Extractives

Industry: Oil Exploration and Production, Coal, Mining

Sector: Renewables

Industry: Forestry Management

Issue: updating and harmonizing language about community engagement and indigenous rights

²⁰ Biofuels industry Brief

The four industry standards specifying treatment of indigenous peoples as well as community relations are Oil Exploration and Production, Mining, Coal, and Forestry Management. E&P and Mining standards are identical in their language, but Coal and Forestry are not.

E&P and Mining are the most comprehensive of the standards. In two instances the language is outdated, however. The first instance relates to the section within EM0101-14: "Discussion of engagement processes and due diligence practices with respect to human rights, indigenous rights, and operation in areas of conflict", in which "The registrant shall describe its due diligence practices and procedures with respect to indigenous rights of communities in which it operates or intends to operate, including:... Use of free, prior, and informed consent (or consultation) processes". Free, prior and informed consultation is no longer state-of-the-art. According to the World Bank, "The Free, Prior, Informed Consent (FPIC) provision, which was already a major step forward from the Bank's prior position of Free, Prior, Informed Consultation, has been strengthened to require the World Bank to document that consent has been obtained. If this can't be shown, the World Bank will not proceed with the aspects of the project relevant to Indigenous Peoples. These improvements provide for a new standard that is at the forefront of International Financial Institution ("IFI") safeguard policies."²¹ Since World Bank presence is common in the public/private partnerships in which E&P and mining companies are often involved, this change in language will be consistent with other issuer disclosure on the topic.

The second instance of outdated language concerns the use of the term "indigenous" itself. The World Bank now uses the term, "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities".²² The same argument would apply as in the discussion of Free, Prior and Informed Consent as it supersedes earlier terms.

With these changes implemented, the E&P and Mining standards may serve as models for the standards of coal and forestry. As such, the Coal standards and Forestry Management standards should be modified so that they conform to E&P and Mining standards.

In comparing Coal with E&P/Mining, one notes that the latter contains two sections: "Community Relations" and "Security, Human Rights, and Rights of Indigenous Peoples". Coal has one combined section: "Community Relations & Rights of Indigenous Peoples". The Community Relations section mimics E&P/Mining. But there is only one section in Coal about indigenous rights, "EM0201-11. (1) Proven and (2) probable reserves in or near indigenous land" and no discussion of human rights due diligence. Conflict with indigenous people over coal projects is not uncommon.²³ Coal standards should be made to conform to E&P/Mining standards on this topic.

²¹ <http://www.worldbank.org/en/news/press-release/2015/08/04/world-bank-board-committee-authorizes-release-of-revised-draft-environmental-and-social-framework>

²² World Bank Environmental and Social Framework (2017): "Environmental and Social Standard 7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities

²³ <http://beta.latimes.com/nation/la-na-sej-crow-coal-20150721-story.html> . See also,

Similarly to Coal, Forestry Management also has one combined section: “Rights of Indigenous Peoples”. This section combines and mimics the language of both of the E&P/Mining sections. This could be misleading, as any community relations/human rights language could be construed to only apply to indigenous groups. Forestry should follow the E&P/Mining language. Also, the following language was removed from the introductory paragraph on “Rights of Indigenous Peoples”: “Sustainable forestry certifications incorporate the considerations of community relations and the rights of indigenous peoples, which can influence reputations and demand for the products of forestry and logging companies.” There is no explanation for this omission in the Basis for Conclusions.

Summary of recommendations:

1. “Environmental & Social Impacts of Ingredient Supply Chains” sections in the Agriculture, Alcoholic Beverages, Non-Alcoholic Beverages, and Processed Foods industries should be harmonized to display identical language.
2. The equivalent section in the Meat, Poultry and Dairy industry should be treated in this way as well if there are U.S. issuers that use beef from the global south in their supply chains.
3. The equivalent section in the Biofuels industry should be treated in this way as well for those companies that utilize Brazilian ethanol.
4. Language in the Indigenous Rights section of the Oil E&P and Mining industries should remove “Free, Prior, Informed Consent (Consultation)” in favor of “Free, Prior, Informed Consent”.
5. All mentions of Indigenous Peoples should make clear that they are referring to the new World Bank gloss which includes tribal peoples of Sub-Saharan Africa.
6. Language around community engagement and treatment of indigenous peoples in the Coal and Forestry standards should be made to conform to the language in the E&P/Mining standards.

Respectfully submitted,
Paul Rissman

“Peabody Energy and Native Americans in Dispute Over Mining in Arizona”. *New York Times*, 29 December 2016, and, <https://theecologist.org/2017/feb/16/indigenous-land-rights-could-halt-australias-largest-coal-mining-project>