

Should I go to court? An assessment of the role of the Judiciary in disputes between cattle raisers and meatpackers in Brazil

Silvia Morales de Queiroz Caleman
Guilherme Fowler de Avila Monteiro

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RESUMO

Devo ir ao tribunal? O papel do Judiciário nas disputas entre pecuaristas e a indústria frigorífica no Brasil

A pesquisa apresentada neste artigo tem por principal objetivo analisar o papel do Judiciário na solução de conflitos entre os pecuaristas e a indústria frigorífica no Brasil. Para tanto, investiga-se a aquisição de gado para abate no estado de Mato Grosso do Sul (Centro-Oeste do Brasil), em três etapas. Inicialmente, descreve-se o padrão da transação entre os pecuaristas e a indústria frigorífica, identificando um vácuo de garantias ao longo da cadeia de suprimentos. Em sequência, apresentam-se evidências de que esse vácuo de garantias pode dar margem a conflitos legais de não pagamento, o que, de fato, é a questão prevalente no Judiciário. Finalmente, investiga-se o papel do Judiciário para solucionar esses conflitos. Os resultados sugerem que, em média, os produtores têm baixa confiança no sistema legal, indicando um papel potencial que mecanismos informais desempenham nesse sistema agroindustrial. Conclui-se com sugestões de estratégias públicas e privadas.

Palavras-chave: instituições, judiciário, garantias, carne bovina.

1. INTRODUCTION

At the end of the 1990s, the Brazilian meatpacking industry went through a huge expansion process. During this period, the largest Brazilian meatpackers issued shares in the stock market, internationalized their activities and diversified their business by incorporating other activities beyond slaughtering and beef processing⁽¹⁾. In 2008, due to a severe economic crisis, part of the meatpacking

Silvia Morales de Queiroz Caleman, Graduada em Engenharia Agrônoma pela Escola Superior de Agricultura "Luiz de Queiroz" da Universidade de São Paulo, Mestre em Agronegócios pela Universidade Federal de Mato Grosso do Sul, Doutora em Administração pela Faculdade de Economia, Administração e Contabilidade da Universidade de São Paulo, Especialista em Administração Rural pela Universidade Federal de Viçosa e MBA em Gestão Empresarial pela FGV Management, é Professora Adjunta na Universidade Federal de Mato Grosso do Sul (CEP 79070-900 – Campo Grande/MS, Brasil). E-mail: silvia.caleman@ufms.br
Endereço:
Universidade Federal de Mato Grosso do Sul
Centro de Ciências Humanas e Sociais
Avenida Senador Filinto Muller s/n – Unidade 10
Cidade Universitária/ Caixa Postal 549
79070-900 – Campo Grande – MS

Guilherme Fowler de Avila Monteiro, Graduado em Economia, Mestre em Teoria Econômica e Doutor em Administração pela Faculdade de Economia, Administração e Contabilidade da Universidade de São Paulo, é Professor no Insper – Instituto de Ensino e Pesquisa (CEP 04546-004 – São Paulo/SP, Brasil). E-mail: guilhermefam@insper.edu.br

industry collapsed. Because they were highly leveraged and with a significant portion of their debts listed in U.S. dollars, many Brazilian meatpackers went bankrupt, and the majority of cattle raisers failed to get paid for animals delivered to the slaughterhouses.

The problem of non-payment in the meatpacking industry, however, is not new. The 2008 crisis aside, the history of fraudulent bankruptcy in the meatpacking industry is always vivid in the memory of economic agents that operate within the Brazilian beef industry (CALEMAN, 2010). The relationship between cattle raisers and meatpackers in Brazil is thus characterized by a traditional rivalry. In regard to spot market transactions, the main conflict concerns the producer's risk of not receiving payment for the animals sold to the slaughterhouse. Accordingly, the lack of guarantees for the supply of cattle for slaughter is a latent problem in the agribusiness sector in Brazil. The bankruptcy of meatpackers generates a mass of farmers who become creditors and may eventually go to court in order to get paid for the animals delivered to the slaughterhouse. In this regard, the judiciary may once again play a major role in reducing transaction costs in the agribusiness sector.

The main objective of this perspective paper is to analyze the role of the judiciary in resolving conflicts between cattle raisers and meatpacking firms. Looking at the transaction for the acquisition of cattle for slaughter in the state of Mato Grosso do Sul (Central-Western region of Brazil)⁽²⁾, the present study focuses on the role of formal institutions (i.e., the courts) in resolving conflicts in the beef agribusiness system. The analysis encompasses three steps. First, the authors describe the transaction pattern between cattle raisers and meatpacking firms, identifying a guarantee vacuum within the supply chain. Second, the authors present evidence that the guarantee vacuum may give rise to legal conflicts of non-payment, which are indeed prevalent in disputes that reach the courts. Finally, the role of the judiciary in resolving these conflicts is investigated. Results suggest that, on average, producers have low confidence in the legal system, indicating the potential function that informal mechanisms may play in the supply chain.

The paper is structured as follows: 1. Introduction; 2. Theoretical background; 3. Description of the transaction pattern; 4. Assessment of legal disputes; 5. Econometric evidence; and 6. Conclusions.

2. THEORETICAL BACKGROUND

This research focuses on the role of the judiciary in solving a problem of economic inefficiency in the transaction between cattle raisers and meatpackers. The authors claim that the institutional economic analysis (COASE, 1937; WILLIAMSON, 1985; NORTH, 1991; WILLIAMSON, 1996; BARZEL, 1997) offers a theoretical basis for addressing this problem. According to the institutional approach, institutions matter and the judiciary plays an important role.

Coase (1937) was one of the first authors to investigate the importance of institutions. He fundamentally argues that there are costs involved in operating in the market, called "transaction costs". Williamson (1985) further operationalizes these ideas, noting that transaction costs may occur both *ex ante* – including the costs of drafting, negotiating, and establishing contractual safeguards – and *ex post* – encompassing the costs of contractual adjustment, the costs related to governance structures, and those associated with disputes that potentially arise after the signing of any agreement. As a general principle, the efficiency of economic relations is related to the reduction of transaction costs (WILLIAMSON, 1996).

Williamson (1985) also suggests an analytical scheme made of three levels: individuals, organizations, and institutions. In the scheme, individuals represent the base level, indicating the fundamental influence derived from behavioral characteristics (e.g., bounded rationality). Organizations, the middle level, may be restricted by or take advantage of opportunities arising from their interactions with institutions and individuals. The institutional environment represents the top level. Institutions not only determine the rules under which business will be conducted, but also induce the agents to adapt and seek new forms of interaction.

Especially in regard to the institutional environment, North (1991) defines it as a system of informal and formal rules that have an effect on the process of transferring property rights. Informal rules are implicit constraints within a particular culture which can be derived from customs or codes of conduct. Formal constraints, on the other hand, are compulsory rules made explicit by some legitimate power with the purpose of maintaining order and the development of a society. Formal rules interfere with the way transactions are carried out because they create incentives or transaction costs for organizations.

An important, adjunct dimension of formal rules is the functioning of the judicial system. It has been long argued that the development of societies is strongly connected to the existence of active, stable judicial systems (SHERWOOD, SHEPHERD, and SOUZA, 1994; YEUNG, 2010). Barzel (1997, p.98), for instance, claims that

“the courts participate in rights delineation in two ways. The first is indirect: when the parties choose to settle their disputes without resorting to the courts, their actions are influenced by their perceptions of how the courts would have acted in their dispute. The second is direct: the disputes are actually settled by the courts”.

It bears emphasizing that Barzel's argument is founded on the notion that the courts do work in an effective way. Dixit (2004, p.3), however, notes that the legal system may be dysfunctional in many countries. In India, for instance, one can

find 25 million cases pending before the courts (Bearak, 2000). In Russia, observers note that the enforcement of the verdicts of the courts is problematic, mainly for smaller enterprises (HAY and SHLEIFER, 1998; HENDLEY, MURRELL, and RYTERMAN, 2001). Similar situations are reported in Eastern Europe and in Vietnam (McMILLAN and WOODRUFF, 1999; 2000).

In Brazil, studies prepared by the World Bank highlight a number of weaknesses in the national judicial system⁽³⁾. Yeung and Azevedo (2009) also identify different problems in the Brazilian judiciary; the authors argue that the flaws in the judicial system have historical, cultural, political, structural, and legal origins⁽⁴⁾. According to Yeung and Azevedo (2009), the difficulties observed in the Brazilian judicial system become more evident because of the high number of cases pending before the courts, and the high volume of cases designated to each judge (an average of 10,000 per judge). These factors, in conjunction with the numerous possibilities of appealing a judicial decision, contribute to a perverse result: the average time for judgment of a case in Brazil ranges from 1,000 to 1,500 days. Beyond the traditional factors used to explain the inefficiency of the judicial system – lack of financial and human resources, as well as inadequate criminal procedure – Yeung and Azevedo (2009) call attention to the inefficient management of the “judicial machine” and the organizational culture supported by an entrenched bureaucracy.

A second line of analysis seeks a better comprehension of the judge’s decision-making process, investigating the connection between the judge’s behavior and the efficiency of the judicial system. According to Arida, Bacha, and Lara-Rezende (2005), for instance, Brazilian judges tend to favor the weaker party in a legal dispute as a way to promote some sort of social justice. Ferrão and Ribeiro (2006), in turn, examine the behavior of Brazilian judges in 181 cases and test the concept of jurisdictional uncertainty, defined as the bias of the judge against the creditors, rendering difficult the application of the guarantees in a specific transaction.

Rezende and Zylbersztajn (2012) analyze judicial decisions in the context of contractual breaches occurring in the forward sales contracts of soybeans in the Midwest region of Brazil in the early 2000s. Considering the impact of judicial decisions on firms’ strategy, Rezende and Zylbersztajn (2012) find evidence that court decisions led to a 44% reduction in the number of forward sales contracts of soybeans in the region, as well as a reduction in other types of contractual arrangements. From a similar perspective, Zylbersztajn and Nadalini (2007) analyze the decision of a tomato processing company to move from the Northwest region of Brazil to the Midwest region due to local producers’ high frequency of contractual breaches. Zylbersztajn and Nadalini (2007) find evidence showing that the company’s decision was based on the inability of the local court to guarantee the enforcement of contractual clauses agreed by the parties involved in the transaction.

In its entirety, the evidence discussed above poses questions about the effective capacity of the Brazilian judiciary in resolving conflicts that emerge in the agribusiness sector. Taking into account this issue, and with specific reference to the conflict in the production of beef, section 3 of the present paper examines the transaction pattern between cattle raisers and meatpacking firms in the state of Mato Grosso do Sul, Brazil. Quite surprisingly, the authors identify a guarantee vacuum within the supply chain, which may involve recourse to the legal system as described in section 4. In section 5, the authors investigate the degree of farmers’ confidence in the judiciary.

3. THE SUPPLY OF CATTLE TO THE MEATPACKING INDUSTRY IN BRAZIL

The present paper investigates the transaction carried out between cattle raisers and meatpacking firms in the spot market in Brazil⁽⁵⁾. In the majority of Brazilian states, the price to be paid to cattle raisers is measured in 15-kilogram increments⁽⁶⁾. The price is related to animals’ dead weight, being a function of the “carcass yield”. The carcass yield is the ratio between the weight of the live animal to be slaughtered and the weight of its carcass (flesh and bones, measured after slaughter) in percentage. The farmer is typically paid based on the carcass yield⁽⁷⁾.

In general, cattle for slaughter are traded through direct sales or brokers. In the case of direct sales, it is common for the cattle raiser to come in contact with meatpacking employees to get information on prices and to negotiate the amount of animals to be slaughtered as well as the payment terms. The payment for animals may occur “in sight” or within 30 days. After the meatpacking bankruptcy in 2008, spot prices are usually paid within 2 to 3 days after the slaughtering and this usually includes a discounted rate of 3% to 5%, depending on previous negotiations. In the case of deferred payment, the farmer receives a Rural Promissory Note (RPN) as collateral security. After the negotiation, the animal is loaded at the farm. Transportation is typically performed by the meatpacking firm’s own truck or by private contractors (i.e., a carrier) hired by the meatpacker.

Meatpacking firms can also outsource the purchasing of animals to independent brokers. In some situations the brokers not only mediate the purchase of livestock, but also escort the shipment and watch over the animal slaughter. There are four types of intermediation.

- The broker may be a buyer’s representative with an exclusive relationship with the meatpacking firm. Under this arrangement, the broker’s commission is typically paid by the company.
- Alternatively, the broker may work as an independent professional who represents different meatpacking companies. In this case, the cattle raiser trusts the broker as they usually have a long-term relationship. The broker brings information

on market conditions and may eventually supervise the animal slaughtering process. The commission of independent brokers is typically paid by cattle raisers themselves. In this case, the intermediation occurs without guaranteeing the effective transaction – i.e., the broker does not guarantee the payment of the animal sold, nor the carcass yield.

- Animal intermediation may also involve some type of guarantee. The broker may ensure part of the transaction (e.g., the carcass yield) or the whole transaction (e.g., payment in advance). In the case of guaranteeing carcass yield, the broker assumes the risk of variation in the carcass performance when comparing the animal's weight at the farm and at the slaughterhouse. The broker assumes a portion of the risk because he is paid only if the carcass yield at the slaughterhouse is higher than at the farm.

In the case of guaranteeing the whole transaction, the broker advances payment to cattle raisers based on the animal weighing at the farm and sells the animal to the slaughterhouse. The broker's remuneration consists of the positive price difference between buying and selling the animals. This type of intermediation is usually performed by specialized brokerage firms, and is not very common as it involves the total risk of the transaction.

- Finally, the broker may work as a dealer (**marchand**), buying animals from cattle raisers, slaughtering them in an out-sourced manufacturing plant, and selling the meat to retail.

Figure 1 illustrates the main types of intermediation. The dashed arrows represent the cash flow and the solid arrows represent the product flow. Although formal data about the share of each type of intermediation is not available, one can say that the most common type is intermediation without guarantee.

The description above suggests that one important dimension regarding the analysis of the supply of cattle for slaughter is the guarantee pattern of the transaction. As noted, the payment to cattle raisers may occur "in sight", made within 2 to 3 days after the slaughtering, or it may be "deferred". In the case of deferred payment – which is generally made 30 days after the animals' slaughter – the slaughterhouse issues a Rural Promissory Note (RPN) on behalf of the farmer in order to guarantee the payment. The RPN provides a collateral security, being usually signed and guaranteed by an employee of the commercial department of the firm⁽⁸⁾. Following the established schedule, the company makes the payment directly into the farmers' bank account.

In case the producer needs to advance the payment, he or she may discount the RPN at an accredited bank. There are two types of discount: RPN supported by Law decree N° 167/1967 and RPN discounted in the secondary market, i.e. without formal legal support. The discount supported by the Law decree is under the bank's responsibility. In the case of secondary market

discount, the bank usually sets a tying operation to discount the RPN. Actually, it is a personal credit transaction backed by the RPN; in this situation, responsibility rests with the producer and not with the RPN issuer. This method is called **discount in parallel** and in this operation the risk is borne by the producer.

Regardless of the type of payment (in sight or deferred), one may note that cattle raisers face a lack of guarantees in their business operations. Producers deliver the animals to slaughterhouses without receiving accurate information about expected returns. The carcass yield and the amount owed by the slaughterhouse will be defined only after the slaughter and the carcass evaluation. It is only at this stage that producers may receive a formal document, the Rural Promissory Note, which qualifies them as a creditor of the company. One can then identify a time lapse between the delivery of the animal to the slaughterhouse and the notification of the amount that will be paid to the cattle raiser. This time lapse is equivalent to a guarantee vacuum within the Beef Chain.

As a general result, the guarantee vacuum lies at the heart of the conflicts between cattle raisers and meatpacking firms. From a theoretical point of view, such a situation emerges as a paradox, being inherently unstable because the lack of guarantee may give room to opportunistic behavior (WILLIAMSON, 1996). Accordingly, if transactions are recurrent in the supply chain, one may expect the emergence of some type of organizational solution. The authors are particularly interested in the role of the judiciary as a solution to the guarantee vacuum in beef production. By settling disputes and mitigating the magnitude of transaction costs, the courts are expected to reduce the negative impact associated with the lack of guarantees in the supply chain. In order to further investigate this subject, the next section examines the pattern of conflicts brought before the courts by cattle raisers.

4. LEGAL DISPUTES: AN OVERVIEW

As suggested in section 3, the conflict between cattle raisers and meatpacking firms is more acute in the case of direct sale and intermediation with no guarantees. In either case, farmers are at risk of not receiving payment from the meatpacker. If this does occur, the farmer may file a lawsuit against the meatpacker.

In the present paper, the examination of legal disputes is based on a survey of lawsuits filed in the Court of Justice of the state of Mato Grosso do Sul, from November, 2002 to December, 2010. The survey was developed with the explicit purpose of identifying the conflict pattern that brings cattle producers and meatpacking companies to court.

As shown in Table 1, there were a total of 50 trials at the Court during the period analyzed. The highest number of court trials occurred in 2003, when 11 cases were brought before the court. The data also reveals that the main reason for conflict between cattle raisers and slaughterhouses involves the claim of non-payment for animals sold to slaughter. In effect, 78%

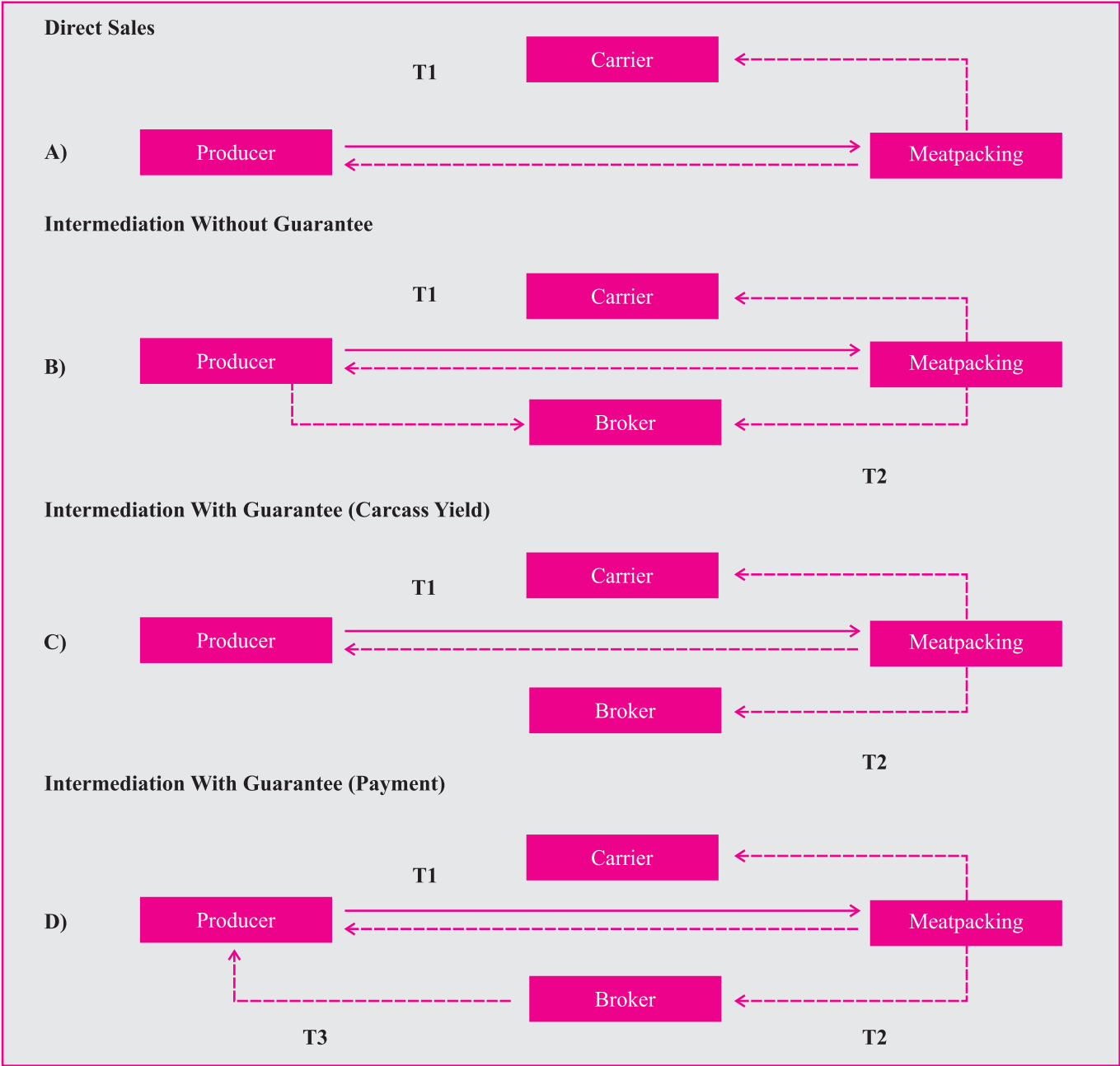


Figure 1: The Mode of Supply of Cattle to Meatpacking Firms

of the legal claims are related to the general situation in which the producer does not receive payment of the animal sold for the slaughterhouse. Therefore, the lack of guarantees emerges as an underlying source of conflict within the meat production industry in the state⁽⁹⁾.

In the case of non-payment for the animals, the authors examined the allegations underlying this litigation (Table 2). Based on judges' notes in each case, the predominant reason for the non-payment is the bankruptcy or the evidence of potential bankruptcy of the meatpacking firm, which represents

48% of the total legal claims⁽¹⁰⁾. Another important cause of conflict (30%) is the debt payment made to a third party who has not been formally accredited as a creditor, such as cattle auctioneers or cattle brokers.

It is interesting to note that bankruptcy in the meatpacking industry may be related to a fraudulent initiative. According to a legal statement filed by the State General Attorney⁽¹¹⁾ there exist complex ownership relations among different slaughterhouses, featuring a practice by which the legal title of the meatpacking firm (*de jure* property) does not correspond to

Table 1

Lawsuits Brought to Court (Cattle Raisers and Meatpackers): Mato Grosso do Sul, 2002 – 2010

Legal Claim	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Producers request the bankruptcy of the meatpacker		4								4
Meatpacker claims that animals were not delivered according to specifications agreed between the parties					1					1
Producers request a revision on the discount applied to contract price		1	1							2
Disputes between the parties on the amount paid								1	3	4
Farmers claim non-payment of the animals delivered to the meatpacker	4	6	3	5		5	7	4	5	39
Total	4	11	4	5	1	5	7	5	8	50

Source: Court of Justice of Mato Grosso do Sul/Brazil – Elaborated by the authors.

Table 2

Legal Claims Brought to Court Under the Claim of Non-Payment of the Animals Delivered to the Meatpacker

Description	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Disputes about formal aspects of documents and the guarantor liability	1		1	1		1	2			6
Producers request the attachment of a property as collateral for payment	3	1								4
Payment was made to a 3 rd person who is not accredited by the creditor/farmer		1	2	3		2	3	1	3	15
Producers request the blocking of beef stock		1								1
Producers request property confiscation		3				1	1	3		8
Company is under bankruptcy				1		1	1			3
Questions about responsibility of outsourcing slaughter									1	1
Questions about payment prescription									1	1
Total	4	6	3	5	-	5	7	4	5	39

Source: Court of Justice of Mato Grosso do Sul/Brazil – Elaborated by the authors.

actual possession (*de facto* property). Under this practice, it becomes difficult to penalize the company and, in the case of bankruptcy, the creditors may be prevented from recovering

the debts. The explanation is that the *de jure* owner is usually a person with low income, without any property to give as a guarantee to the transaction. If this is the case, the producer may

not receive any financial settlement even if the judge confirms the producer's right to receive the debt.

In hypothetical terms, the farmer could go to a local Board of Trade to see who is listed as owner of the slaughterhouse. The farmer could also find out, before making a transaction, whether the listed owner is fully able to pay their financial commitments. In practice, however, there are costs to gathering information and costs to verifying information (COASE, 1937). The farmer may eventually resort to a Producer Association, asking that it perform this task. Associations, however, reportedly oppose performing this kind of task, considering it beyond their purview. In any case, the existence of such fraudulent practice sheds light on the lack of formal requirements to authorize the operation of slaughterhouses⁽¹²⁾.

As indicated in Table 2, there seems to be an important relationship between the number of lawsuits in court and the occurrence of bankruptcy. In line with this evidence, Table 3 shows that a total of 11 meatpacking companies in Mato Grosso do Sul went bankrupt, asked for bankruptcy protection, or were under judicial recovery between 2003 and 2010.

So far, we know that the relationship between cattle raisers and slaughterhouses is characterized by a guarantee vacuum. The evidence presented in this section also suggests that such a situation may give rise to legal conflicts of non-payment, which are prevalent in disputes that reach the courts. Taking

into account the perspective of the cattle raiser, the next section investigates the role of the judiciary in resolving these conflicts. Specifically, we present a quantitative analysis whose purpose is to examine the producers' confidence in the judiciary and the role of the courts in arbitrating conflicts over non-payment for cattle sold for slaughter.

5. CONFIDENCE IN THE JUDICIARY

This empirical section starts with a description of the survey which serves as a basis for the examination of the producers' confidence in the judiciary regarding the solution of conflicts over non-payment for cattle sold to slaughter. The data was collected through 107 questionnaires in March, 2010 in the state of Mato Grosso do Sul. This is a non-probabilistic sample since part of it is characterized as a self-generated sample (52% of the questionnaires). The random component of the sample (48% of the questionnaires) consists of farmers from a list of producers that sold animals for slaughter during January and February, 2010. The list was made available by the State Bureau of Animal and Plant Health Protection (IAGRO/MS). The interviews were conducted with the farmers in charge of making decisions about the animal trade⁽¹³⁾.

Table 4 summarizes the profile of the interviewed producers. More than half of the respondents have a college degree, have

Table 3

Meatpackers Under Bankruptcy or Insolvency, Mato Grosso do Sul

Meatpacking Firms	Status	Year	Municipality/MS
Frigorífico Pedra Bonita Ltda.	Bankruptcy protection	2003	Itaporã
Frigorífico Ponta Porã Ltda.	Bankruptcy	2003	Ponta Porã
Torlim Produtos Alimentícios Ltda.	Verge of bankruptcy, but currently in operation	2008	Amambaí Itaporã
Frigorífico Bonifácio Ltda./Frigorífico Boi Verde Alimentos Ltda./ Frigorífico Boi do Centro Oeste (*)	Bankruptcy in industrial plants lease		Rio Verde
Frigorífico Garantia	Plant closing	2008	Amambaí
Campo Oeste Carne Indústria, Com., Imp. e Exp. Ltda.	Bankruptcy	2008	Campo Grande
Frigorífico Margem Ltda.	Judicial recovery	2008	Paranaíba/ Três Lagoas/ Coxim
Frigoestrela S.A	Judicial recovery	2008	Ribas do Rio Pardo
Independência Alimentos S.A	Judicial recovery	2009	Nova Andradina/ Anastácio/Campo Grande
Frialto	Judicial recovery	2010	Iguatemi
Fribrasil Alimentos Ltda.	Judicial recovery	2010	Caarapó/Eldorado

Notes: (*) Case 2007.006092-8/0001.00 (April, 16th, 2007) presents a full description of the fraudulent relationship between three meatpacking firms (Frigorífico Bonifácio Ltda., Frigorífico Boi Verde Alimentos Ltda. and Frigorífico Boi do Centro Oeste) where owners make use of partners to cover up tax debts and commit acts which can potentially harm farmers.

worked in cattle production for over 20 years, and present a strong income dependence on the cattle production. In regard to technical conditions, the average cattle production presents an intermediary technological level as made evident by slaughtered steers between 20 and 36 months of age, the use of feed supplementation in the dry season, and the use of artificial insemination for breeding animals.

The pattern of conflicts in the transaction between producers and the meatpacking firms is presented in Table 5. More than half of the interviewed producers reported problems of not being paid for the animals sold to slaughterhouses, and of these, nearly half reported that the problem occurred more than once.

It is noteworthy that among those respondents who reported problems of non-payment, less than half turned to the courts as a way to ascertain their rights, and less than 20% of these said that the judicial mechanisms were effective to solve the problem. Overall, 63% of respondents say they have little confidence in legal justice.

According to the producers, the main reasons for the lack of confidence are⁽¹⁴⁾: the inefficiency of justice (70%), mainly

represented by the length of the process (i.e., the possibility of appealing repeatedly in order to “gain time”) and the existence of legal loopholes that delay the judges’ final decision; the belief that current legislation does not prioritize the payment of cattle suppliers (52.3%)⁽¹⁵⁾; lack of enforcement of the court’s decisions (51.4%); the existence of legal but not de facto shareholders (33.64%); and attorneys’ fees (15.88%).

The low level of enforcement of the courts’ decisions could be associated with the producers’ perception that the slaughterhouse cannot afford the debt because the legal shareholder of the firm is not de facto. Thus, he or she might lack the necessary equity to ensure the debt. Converging with the perception that the law is weakly enforced and the lack of equity guarantees, producers argue that the standards and criteria for granting operating licenses for new slaughter plants in the State of Mato Grosso do Sul are not effective in ensuring the working capital necessary to operate the businesses.

Besides the reasons listed above, other explanations cited by producers are bureaucracy, slaughterhouses’ lack of equity to honor payments, and the possibility of having more effective

Table 4

Respondents’ Profile

	Number of Producers	%		Number of Producers	%
Time in Cattle Production Activity			Level of Education		
1 to 10 years	11	10.3	Basic education	17	16.2
11 to 20 years	26	24.3	High School	15	14.3
21 to 30 years	40	37.4	College (or more)	73	69.5
More than 30 years	30	28.0			
Family Tradition in Cattle Production			Production Capacity (Slaughter/Year)		
1 st generation	22	20.5	Less than 500	35	34.0
2 nd generation	37	34.6	501 to 2,000	46	44.7
3 rd generation	22	20.6	2,001 to 5,000	14	13.6
4 th generation or more	26	24.3	More than 5,000	8	7.7
Percentage of Income from Cattle Production			Production Technology		
Less than 50%	17	16.0	Pasture	48	45.3
51% to 99%	24	22.6	Supplementation (dry season)	35	34.0
100%	65	61.4	Feed lot	22	20.7
Slaughter Age			Use of Artificial Insemination		
Up to 20 months	1	1.0	Yes	53	50
20 to 36 months	78	73.6	No	53	50
More than 36 months	27	25.4			

Source: Research survey.

Table 5

Pattern of Conflicts

Level of Confidence in Justice			Non-Payment Historical?		
	Number of Producers	%		Number of Producers	%
High	12	11.21	Yes	64	59.81
Average	27	25.23	No	43	40.19
Low	68	63.55			
Number of Times / Non-Payment			Last Non-Payment		
Once	35	54.69	< 5 years	31	48.44
2 times	11	17.19	5 to 10 years	14	21.88
3 times	12	18.75	> 10 years	19	29.69
> 3 times	6	9.38			
Judicial Mechanisms?			Is the Judicial Mechanism Effective?		
Yes	30	46.88	Yes	5	15.63
No	34	53.13	No	27	84.38

Source: Research survey.

extra-judicial agreements (less costly). In sum, all the reasons perceived by the producers illustrate the inefficiency of formal institutions (Brazilian Courts) to guarantee cattle raisers' property rights.

Considering the results above and seeking further evidence, the authors perform a logit estimation. The econometric analysis is conducted based on three main hypotheses: the lack of confidence in legal justice is enhanced in the presence of past conflicts (H1), in the recurrence of non-payment events (H2), and in the presence of recent defaulting (H3). Table 6 shows the variables included in the econometric model, their relationship with the research hypotheses and the expected sign.

In the estimation of the logit model, the dependent variable takes two values: **0** in case of the producers' lack of confidence in legal justice and **1** for a large amount of confidence in legal justice. The regression also encompasses control variables: elements of scale (number of properties and slaughter capacity) and the producer's education level (college degree). The results are presented in the Table 7.

The regression result suggests that non-payment for the cattle sold to slaughterhouses is the fundamental factor in shaping the producers' confidence in the judiciary. In a broader sense, this result suggests that non-payment itself can be interpreted by farmers as evidence that the legal system operates in a limited way as a mitigating element of breach of contract. If formal institutions do not take the form of an omnipresent threat that automatically prevents the occurrence of non-payment, they

may also fail in providing legal protection once the non-payment has effectively occurred.

It is worth noting that the above argument does not mean that the issue of guarantee vacuum in the transaction between cattle raisers and meatpacking firms is not addressed by the parties in the transaction. As previously noted, since transaction costs are positive and the relationship in the supply chain is recurrent in time, the parties may develop some kind of organizational arrangement. The regression analysis suggests that in combination with the protection granted by the courts, the parties may base their actions on some kind of informal – social – mechanisms (OSTROM, 1990; ZENGER, LAZZARINI, and POPPO, 2001; NEE and SWEDBERG, 2005). Accordingly, informal mechanisms may play a major role in beef production.

6. CONCLUDING REMARKS

The main objective of this paper is to analyze the role of the judiciary in resolving conflicts between cattle raisers and meatpacking firms. Looking at the transaction for the acquisition of cattle for slaughter in the state of Mato Grosso do Sul, this essay focuses on the role of formal institutions in the resolution of conflicts in the beef agribusiness system.

The analysis encompasses three basic steps. First, the authors describe the transaction pattern between cattle raisers and meatpacking firms, identifying a guarantee vacuum within the

Table 6

Econometric Variable Descriptions and Research Hypotheses

Variable Description	Detailed Hypothesis	Variable Type	Sign
Level of Confidence in Justice (high/ low).	Dependable variable	Dummy	
[problem] The producer has faced a problem of non-payment for the cattle sold to slaughterhouses.		Dummy	-
[probl_jud] The producer has had problem of not being paid for the animal sold to slaughter and has gone to Court.	H1 – The lack of confidence in legal justice is enhanced by the presence of past conflicts.	Dummy	-
[probl_jud-sol] The producer has had problem of not being paid for the animal sold to slaughter; has gone to Court and had the problem solved.		Dummy	+
[probl_vez] The number of times the non-payment occurred.	H2 – The lack of confidence in legal justice is positively related to the recurrence of non-payment events (frequency).	Continuous	-
[probl_temp] The last time the non-payment occurred.	H3 – The lack of confidence in legal justice is enhanced in the presence of recent default events (path dependence).	Continuous	+

Source: Research survey.

supply chain. The authors then present evidence that the guarantee vacuum may give rise to legal conflicts of non-payment, which are indeed prevalent in disputes that reach the courts. Finally, the role of the judiciary to resolve these conflicts is investigated, taking the perspective of the cattle raiser as a reference point. Results suggest that, on average, producers have little confidence in the courts, pointing to the potential role that informal mechanisms may play in the supply chain.

In more general terms, the understanding of the pattern of conflicts surrounding cattle raisers and the meatpacking industry is of major importance for improving beef agribusiness efficiency. To this end, this study investigates the role of the judiciary in addressing the problem of the lack of guarantees in commercial transactions, helping to unfold a source of inefficiency in this productive sector in Brazil. Producers' lack of confidence in legal mechanisms should be considered when developing public and private strategies.

In terms of public policies, the authors argue that the role of the state is to strengthen the legal mechanisms, emphasizing the legal aspects (legislation) and the regulation of the sector. Potential actions encompass:

- Re-classification of claims in bankruptcy law – Brazilian bankruptcy law does not prioritize farmers (suppliers of raw materials). Even though cattle raisers represent the largest group of creditors, they are not necessarily the group with the highest amount owed. Because they represent a class

of creditors with little bargaining power, cattle raisers are disadvantaged in the negotiation of the judicial recovery plan. The relevance of farmers for the future viability of the slaughterhouse, however, might justify the change in credit rating, giving them the necessary creditor priority.

- Revision of standards and criteria for the granting of operating licenses for new meatpacking plants – as argued in this paper, it is common in the beef agribusiness that industrial units be leased off by companies that do not have sufficient financial resources to ensure the operation of the plant (working capital). In some cases, even the ownership structure of these companies is questionable. Thus, the state should be aware of the need for greater regulation of the sector, establishing more stringent criteria for the granting of operating licenses for new businesses.
- Regarding private strategies, the organization of cattle raisers in producer associations may represent an important alternative in filling the gap of guarantees that characterizes the relationship between cattle raisers and the meatpacking industry. The strengthening of collective actions could even induce the adoption of advance payment for the cattle delivered for slaughter. Besides this specific advantage, the building of bargaining power is of major importance for cattle raisers as a way of overcoming the guarantee vacuum in transactions with the meatpacking industry. ♦

Table 7

Producers' Confidence in Legal Justice

Dependable Variable	Confidence in Legal Justice (0 = low; 1 = high)				
[standard error in brackets]	Model [1]	Model [2]	Model [3]	Model [4]	Model [5]
Prob_vez	0.1 [0.17]	0.1 [0.17]			
Probl_temp	0 [0.03]	0 [0.03]	0.04 [0.04]	0.05 [0.04]	0.05 [0.04]
Probl_jud	-0.57 [0.56]	-0.63 [0.58]	-0.03 [0.56]	0.09 [0.59]	0.08 [0.59]
Probl_jud_sol		0.44 [0.98]	0.45 [0.98]	0.55 [1.006]	0.6 [1.01]
Problem			-1.02 [0.57]*	-1.16 [0.59]*	-1.15 [0.60]*
Number of properties				-0.1 [0.17]	-0.1 [0.17]
Slaughter capacity				0 [0.00]	0 [0.00]
College degree					-0.18 [0.49]
Constant	-0.52 [0.28]*	-0.52 [0.27]*	-0.13 [0.30]	0.07 [0.43]	0.177 [0.52]
Log likelihood	-69.63	-69.53	-68.03	-64.44	-64.37
LR chi2	1.11	1.31	4.31	5.62	5.75
Prob > chi2	0.77	0.86	0.36	0.46	0.57
Pseudo R2	0.0079	0.0093	0.0307	0.0418	0.0428

Note: * 10% significance level.

Source: Research survey.

NOTES

- (1) JBS Friboi, the leading Brazilian beef company, is a sound example. The JBS Group operates in the segments of beef, pork, lamb, and poultry. It is also involved in dairy production and the marketing of leather, cans, collagen, biofuels, and vegetables.
- (2) Mato Grosso do Sul is a state located in the Midwest of Brazil which is of great importance to Brazilian beef production and exportation.
- (3) Technical Document n° 319/1996 – “*O Setor Judiciário na América Latina e no Caribe – Elementos para reforma*” [The Judicial Sector in Latin America and the Caribbean – Elements for reform]; Report n° 19/1997 – “*O Estado em Transformação*” [The State Transformation]; and Report n° 24/2002 – “*Instituições para os mercados*” [Institutions for markets]. Available at: <www.worldbank.org>.
- (4) Yeung (2010) presents a detailed analysis of the role of the judicial system and the quality of the judicial system in Brazil. Seeking inspiration from Sherwood, Shepherd, and Souza (1994), and Hammergren (2006), Yeung (2010) identifies and discusses six relevant factors for the construction of an ideal judicial system: guaranteed access; independence; non-biased decision-making pro-

NOTES

- cess; predictability; celerity; and adaptation to and promotion of private activities
- (5) This study does not investigate transactions involving quality contracts in which specific investments are made.
 - (6) 15 kilograms of cattle is called *arroba*.
 - (7) The producer is not paid for the viscera, leather, and other products of slaughter. The average carcass yield is 50%.
 - (8) The employee does not assume legal liability.
 - (9) Considering that the transaction pattern in the beef chain is virtually the same throughout the country, the same result may be expected in the Brazilian beef sector as a whole.
 - (10) There are 24 lawsuits of non-payment that are related to the problem of bankruptcy (according to these litigations, farmers go to court claiming non-payment as a means of protection against the potential for the meatpackers' bankruptcy). Yet another 15 lawsuits, which totaled 39 events of non-payment, are not related to the problem of bankruptcy but to the fact that a 3rd person not accredited by the farmers received the payment for the cattle sold to the slaughterhouse on their behalf.
 - (11) Legal Procedures Nº 2007.006092-8/0001.00 and Nº 2003.012226-5 – <www.tjms.jus.br>.
 - (12) Entrepreneurs interested in establishing a slaughterhouse in Mato Grosso do Sul need to issue sanitary and environmental certificates and register the company with the Board of Trade. The State Decree Nº 12.056, March 8th 2006, provides a general tax treatment to beef cattle operations, and investors

interested in larger tax exemptions may ask for a specific agreement. In general, entrepreneurs request tax exemptions under agreement terms for which it is necessary to present an Economic and Financial viability analysis to the State Government. The Government also requests a set of certificates that prove the suitability of shareholders and a statement of income of each partner. The minimum equity capital required to constitute the firm does not need to comply with specific regulations. In the case of funding, the sponsoring institution establishes the equity capital according to the investment. However, in the case of renting a slaughterhouse and not asking for tax exemptions, the Government only requires the social contract, a simplified certificate from the Board of Trade, and the leasing contract. There is no need to present any certificate to prove the suitability of the shareholders or the economic viability. The last situation poses the greatest challenge in the prevention of the phenomenon of legal but not de facto shareholder.

- (13) The questionnaires were performed preferably by phone (67.29%) or through personal interviews (27.10%). Some interviews were conducted via e-mail (5.61%).
- (14) The frequencies of responses do not total 100% because many respondents identified more than a single reason for their lack of confidence in the courts.
- (15) Regarding the problem of not prioritizing producers in case of bankruptcy litigation, the Brazilian Law of Bankruptcy (Law Nº 11.101, February 9th, 2005) recognizes farmers as unsecured creditors. Specifically, considering the classification of claims under Brazilian law (Law Nº 10.406, January 10th, 2002), labor claims, secured credits, tax credits, and credits with special and general privilege have priority over the unsecured debts.

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ABSTRACT

Should I go to court? An assessment of the role of the Judiciary in disputes between cattle raisers and meatpackers in Brazil

The main objective of this perspective paper is to analyze the role of the judiciary in resolving conflicts between cattle raisers and meatpacking firms in Brazil. Looking at the transaction for the acquisition of cattle for slaughter in the state of Mato Grosso do Sul (the central-western region of Brazil), the analysis encompasses three steps. First, the authors describe the transaction pattern between cattle raisers and meatpacking firms, identifying a guarantee vacuum within the supply chain. Secondly, the authors present evidence that the guarantee vacuum may give rise to legal conflicts of non-payment, which are indeed prevalent in disputes that reach the courts. Finally, the role of the judiciary in resolving these conflicts is investigated. Results suggest that, on average, producers have little confidence in the legal system, indicating the potential function that informal mechanisms may play in the supply chain. The paper concludes by suggesting some implications for public and private strategies.

Keywords: institutions, judicial system, guarantees, beef chain.

RESUMEN

¿Debo ir a la corte? El papel del poder judicial en los conflictos entre ganaderos y la industria frigorífica en Brasil

El principal objetivo en este estudio es examinar el papel del poder judicial en la resolución de conflictos entre ganaderos y la industria frigorífica en Brasil. Para ello, se investiga la compra de ganado para matadero en el estado de Mato Grosso do Sul (centro oeste de Brasil) en tres etapas. Inicialmente, se describe el patrón de las transacciones entre los ganaderos y la industria frigorífica, lo que permite identificar un vacío de garantías a lo largo de la cadena de suministro. A continuación, se presentan evidencias de que dicho vacío de garantías puede dar lugar a conflictos legales relativos a falta de pago, lo que es, efectivamente, el tema predominante en el poder judicial. Finalmente, se investiga el papel del poder judicial en la resolución de dichos conflictos. Los resultados sugieren que los productores tienen, en general, poca confianza en el sistema legal, lo que indica un posible papel que mecanismos informales juegan en este sistema agroindustrial. Se concluye el estudio con sugerencias de estrategias públicas y privadas.

Palabras clave: instituciones, sistema judicial, garantías, carne vacuna.

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