BRAZILIAN SUGARCANE INDUSTRY ASSOCIATION

ETHANOL • SUGAR • ELECTRICITY

Brussels, 8 February 2010

To: European Commission
M. Hans van Steen, Head of Unit TREN D1
M. Piotr Tulej, Head of Unit ENV C5

Re: UNICA's Contribution to the Public Consultation on 'Biodiverse Grasslands, Biofuels and Bioliquids'

In response to the European Commission's consultation paper on 'highly biodiverse grasslands', the Brazilian Sugarcane Industry Association (hereafter UNICA) would like to draw the attention of the Commission services on the following introductory elements:

The Convention on Biological Diversity (hereafter CBD) was established in 1993 and was signed by 193 parties, including European Union countries and the European Community itself. The Convention is the multilateral body that must regulate biodiversity conservation, uses and the equitable distribution of its benefits among countries. The Convention set definitions and guidelines for biodiversity conservation within national policies. Brazil, as a party to the Convention, has implemented its protected areas policy following the international principles and decisions taken by the Parties.

On the occasion of the Third European Union – Brazil Summit held in Stockholm on 6 October 2009, the two parties '*reaffirmed their commitment to effectively implement the three objectives of the Convention on Biological Diversity*' and both welcomed '*the process to establish an Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES), which would support the Convention on Biological Diversity and other biodiversity related conventions, and strive to complete this process at the earliest possible time*'[1]. If the European Union rightly considers the CBD to be the authoritative framework to discuss and agree on protective measures for biodiverse areas, and supports the establishment of the IPBES accordingly, it should not enact legal regulations, especially when applicable to third-countries, using other definitions and types of areas than the ones established under the corresponding international framework aimed at preserving the biodiversity.

Additionally, the Agro-Ecological Zoning of sugarcane that has already been developed at the federal level and also in the state of São Paulo, the major sugarcane producing State in Brazil, is an important tool that determines the areas where sugarcane crops could be cultivated, while ensuring the protection of biodiversity. These instruments, together, forbid the clearing of any type of native vegetation to plant sugarcane.

[1] Joint Statement by the European Union and Brazil, Stockholm, 6 October 2009:
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/110440.pdf

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Since most of the grasslands are located outside of Europe (Annex I), rules governing international trade would prevent the European Union to legislate in a discriminatory manner on ecosystems that are outside its jurisdiction and whose rules would not apply to its domestic production. Article XX of the General Agreement on Tariffs and Trade (GATT) requires sound scientific evidences to support the environmental effectiveness of the land-related sustainability criteria and the EU would have to prove that the environmental objective it seeks cannot be met in a less trade-restrictive manner. While the consistency of the sustainability criteria for biofuels with WTO rules is still open to assessment, any attempt to evaluate environmental impacts along the life-cycle production must be based on scientific consensus and on the correspondent multilateral agreements and treaties.

With regard to the specific questions raised in the consultation document

1- Do you have comments on the suggested operational definition of the two categories of grassland?

- There is currently no agreed multilateral definition of biodiverse grasslands. The United Nations Food and Agriculture Organization (FAO) itself acknowledges a significant "lack of harmonization in the definition of grasslands"[2]. This means that any attempt to create a legal definition of grasslands will be subject to uncertainties and controversies and in the end be subjective.
- If the grassland definition itself is controversial, the proposed approach to distinguish between two categories of grasslands (natural and non-natural) is even more sensitive and subject to interpretation and challenge. For instance, in Brazil, official data for grasslands consider natural grassland to be an area where the grasses are native, even though there are cattle grazing over[3]. However, it is hard to precisely separate these categories, since mixed grasses species are already spread over the country. The definitions proposed by the European Commission consider human intervention as the threshold for categorisation, though it is not an operational one. Considering the huge grasslands area with few animals grazing, one could not identify by satellite images if the grassland has been using for grazing or not.

2- Do you agree that it is not possible to define highly biodiverse grasslands in a way that would permit their identification through remote sensing data/satellite photographs?

- We fully agree that it is not possible to define highly biodiverse grasslands in a way that would allow their identification through remote sensing data/ satellite photographs. As mentioned in the previous answer, even the mere identification of the natural and non-natural grasslands as defined in the consultation document will not be possible with remote sensing data.

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2 FAO (2008). Are grasslands under threat? Brief analysis of FAO statistical data on pasture and fodder crops. Available at: http://www.fao.org/ag/agp/agpc/doc/grass_stats/grass-stats.htm

[3] Instituto Brasileiro de Geografia e Estatística: http://www.ibge.gov.br/home/estatistica/economia/agropecuaria/censoagro/1995_1996/conceitos.shtm

3- Are you aware of, or would you suggest, possible ways of identifying (ranges) of highly biodiverse grasslands, other than through on-site assessments?

- The best way to identify (ranges of) highly biodiverse grasslands is using existing official protected areas maps where they exist, at international and national level. As established by the CBD, the official system of protected areas comprehends those areas with the most important need for conservation.
- In Brazil, there are more than 1.75 million km² of officially protected areas all over the country (an area more than three times bigger than France)[4]. From this total, around 240,000km² (almost the equivalent of the United Kingdom) are located in Cerrados and Caatinga biomes, which contain a significant proportion of natural grasslands and shrublands vegetation. A possible way forward for the identification of areas worth protecting for their biodiversity value is therefore to use the official map of protected areas drawn by national competent authorities, such as the Conservation Units in Brazil (See Annex II).
- In the specific case of sugarcane for ethanol, Brazil has been a pioneer in mapping those areas where the expansion of sugarcane is permitted and where it is not, first at the State of São Paulo level in 2008, and then at the federal level with the Sugarcane Agro-Ecological Zoning in 2009 (see Annex III). Among areas where sugarcane cannot expand are the Amazonia and Pantanal biomes, areas with any kind of native vegetation, protected areas, areas with high conservation value for biodiversity, on top of areas with inadequate soil and climate conditions, areas that requires full irrigation system, areas where topography exceeds 12%, and indigenous reserves.

4- Which approach of the three possible approaches 1, 2 and 3 do you prefer? Please motivate your response and the implications in terms of economic burden, and efficiency.

- Of the three approaches proposed by the European Commission, the first one appears to be the most efficient and adequate in terms of the economic burden that will inevitably fall on economic operators. If all the other sustainability criteria considered in the Directive are complied with, highly biodiverse grasslands would be included in the 'no-go areas' for crops for biofuels.
- Regarding approach 2, it is essential to remember the practical difficulty – if not impossibility – to distinguish in a first stage between natural and non-natural grasslands.
- Approach 2 and 3 insofar they consider on-site assessment are simply not feasible, considering the huge areas of grasslands all over the world (cf. Annex I). In practical terms, the area to be submitted to on-site assessment would be too big and time-consuming, not mentioning that experts in the field are lacking for this exercise. As an example, the sole areas of natural grassland located in the Brazilian Cerrado would represent 7.84 million hectares, an area equivalent to the Czech Republic. This entire area would be submitted to an on-site assessment which would prove useless as sugarcane for ethanol cannot already enter this territory under national legislation.
- Finally, the costs associated to this kind of assessment would be unbearable and unacceptable for producers, especially those in developing countries. As stated by the United Nations Conference on Trade and Development (UNCTAD)[5], the costs associated to meeting and proving sustainability criteria can be prohibitive for many biofuels producers and thus the benefits obtained with the criteria must be compared with the costs of compliance.

[4] Study by Professor Gerd Sparovek team, ESALQ/USP– to be published.

[5] UNCTAD (2008). Making certification work for sustainable development: the case of biofuels.

5- Do you have comments on the suggested criteria for assessment of highly biodiverse grassland, including:
   - Quantifiable indicators for the suggested operationalising approach, their reliability, precision and feasibility;
   - The existence and status of possible suitable lists of species;
   - The range of areas that would be currently covered by such lists?

Concerning the suggested criteria to assess highly biodiverse grasslands, no quantifiable criteria exist for the assessment of biodiversity that are used as consensus by the international scientific community. Even the CBD, the body that can and should regulate biodiversity at international level, does not have yet any quantifiable indicator for this purpose.

6- Is there a better suited alternative approach or can one be developed? Please bear in mind the end result has to be able to distinguish "go" and "no-go" on legally sound and objective bases.

- The most legitimate approach would advise to build on the work by international organisation and national relevant authorities and seek to protect species and areas that have been identified for the biodiversity value. On-site assessment should only operate as a last resort.
- The most suitable and practical approach to distinguish between “go” and “no-go” areas for crops for biofuels is to follow and ensure the respect of the other sustainability criteria the EU legislation already covers, which include, inter alia, areas designated by law or the relevant competent authority for nature protection purposes, areas for the protection of rare, threatened or endangered species recognised by international agreement or included in lists drawn up by intergovernmental organisation or the IUCN.
- Where they exist, national governmental initiatives to establish “go” areas must be recognized as such, especially when developed with the exact same objectives as the ones set by the EU legislation (e.g. biodiversity and carbon stocks preservation). The Brazilian Agro-Ecological Zoning is, without doubt, an excellent example. This is, also, a way to promote the elaboration of specific, locally adapted, implementable policies that are in line with the general values set by the EU legislation and shared by many countries.

With regard to the identification of severely degraded land

UNICA would like to seize the opportunity provided by this consultation to comment on the identification of what it believes constitutes degraded land for the purpose of Annex V – C. 8 b) and 9 of the Renewable Energy Sources Directive (2009/28/EC).

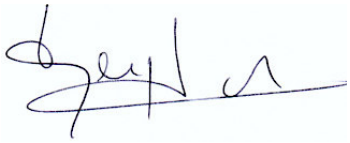
Under the provisions of the EU legislation, a 29g CO2 eq/MJ bonus in the emissions from carbon stock changes caused by land use change under the European methodology laid down in Annex V can be granted to biofuels obtained from land that is severely degraded, meaning *‘land that for a significant period of time, has either been significantly salinated or presented significantly low organic matter content and been severely eroded’.*

UNICA whishes to underline that **degradation is a process** which, the FAO explains, '*lowers the current and/or potential capability of soil to produce, quantitatively and/or qualitatively, goods and services*'[6]. For the Commission's identification of areas that qualifies for 'severely degraded', it is worth noting that six main groups of degradation processes can be identified (some of them being illustrated under Annex IV):

- water erosion: sheet, rill, gully, mass movement;
- wind erosion;
- excess of salts;
- chemical degradation: toxicity, acidification;
- physical degradation: loss of structure, sealing, crusting
- biological degradation: loss of biodiversity, general impoverishment, decrease of cover.

We remain at the European Commission's disposal to answer any question you might have.

Sincerely,



Emmanuel Desplechin
Chief Representative in the European Union

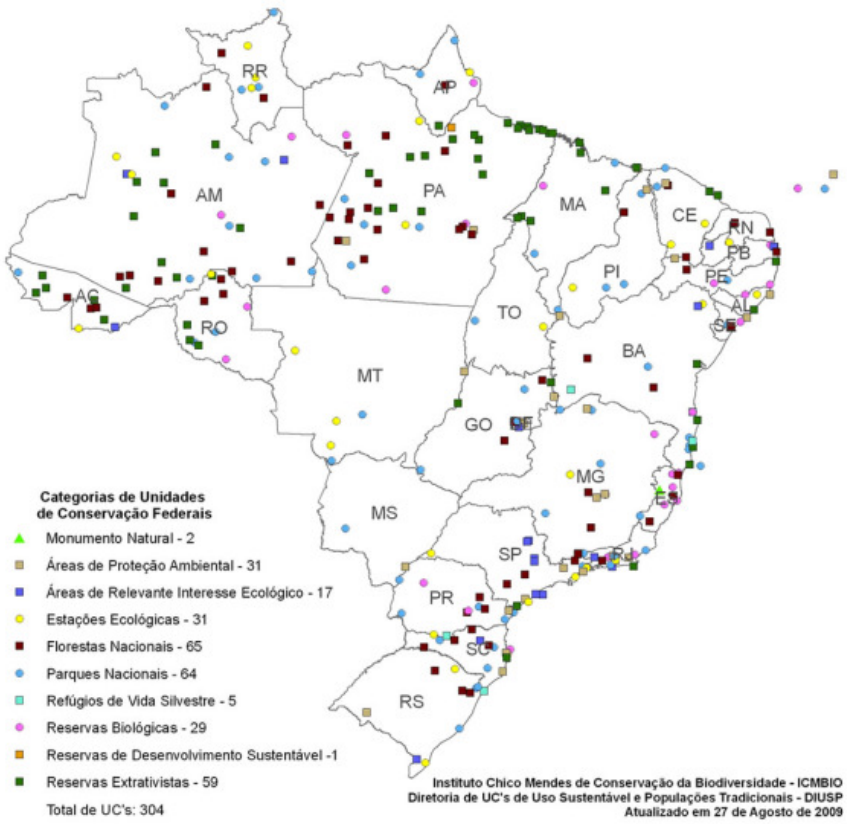
[6] http://www.fao.org/ag/agl/agll/drylands/deflanddeg.htm

Annex I –Pasture areas by continent

COUNTRIES	LAND AREA	PASTURES			% PASTURE		
	(1000 Ha)	(1000 Ha)					
	2000	1980	1990	2000	1980	1990	2000
Africa	2,933,450	911,110	920,374	869,876	31.06	31.38	29.65
Asia	3,508,087	1,016,148	1,126,845	1,106,087	28.97	32.12	31.53
America	3,831,866	769,041	798,909	808,920	20.07	20.85	21.11
Europe	2,208,912	85,578	82,756	182,344	3.87	3.75	8.25
Oceania	848,729	453,485	430,511	419,455	53.43	50.72	49.42
World	13,004,202	3,244,404	3,368,403	3,442,078	24.95	25.90	26.47

Source: FAO[1]

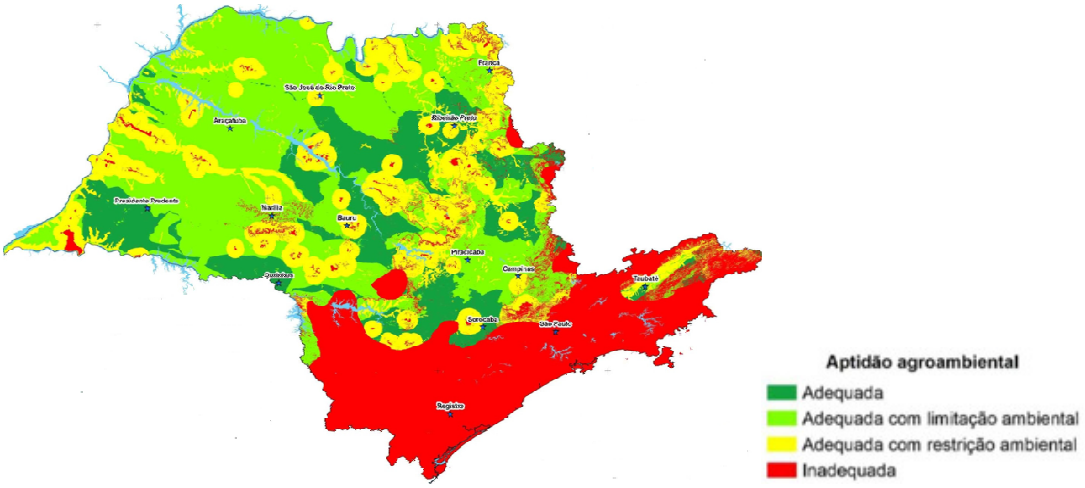
Annex II – Conservation Units in Brazil



Source: Chico Mendes Institute for Conservation of Biodiversity (ICMBio). Brazilian Ministry of the Environment (MMA), August 2009.

Annex III – Sugarcane zoning

State of São Paulo (2008)

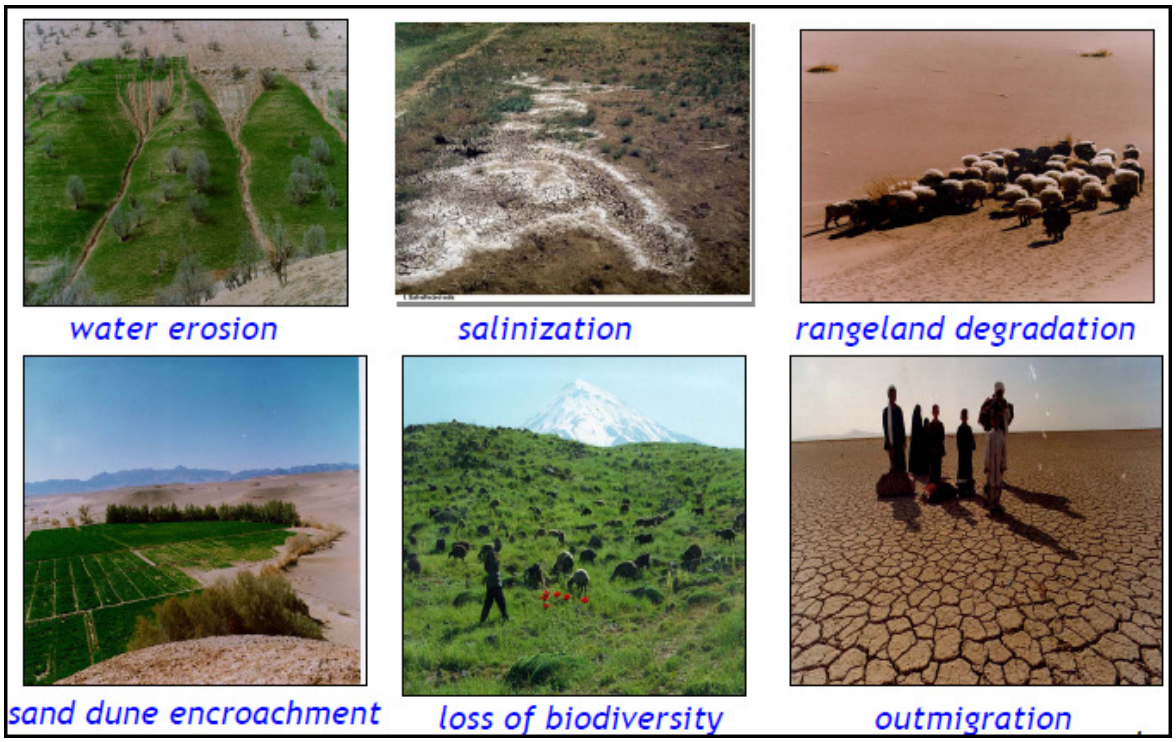


Source: Secretary of Environment of the State of São Paulo

National Agro-Ecological Zoning (2009)

Source: Brazilian Ministry of, Livestock and Food Supply

Annex IV – Examples of processes leading to land degradation



Source: FAO