

# 12º Seminário sobre Comércio Internacional do IBRAC



## Case study: Technical Barriers impacting the trade of biofuels

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# Introduction

- Assessing sustainability criteria for biofuels: the role of WTO and what lies outside it's scope;
- The High Conservation Value Areas case: biodiversity;
- The ISO work: beyond technical issues.
- Reflections.

# The TBT Scope

- Technical regulations, which are measures which lay down product characteristics or their related processes and production methods, with which compliance is mandatory;
- **Standards**, which are measures approved by a **Recognized Body** that provide, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, **with which compliance is voluntary (i.e. not mandatory)**; It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method;
- Conformity assessment procedures, which are procedures used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

# High Conservation Value Areas

- What means a High Conservation Value Area?
  - A biological, ecological, social or cultural value which is considered to be of outstanding significance or critical importance at the national, regional or global scale.
  - This concept, however, has been used for other purposes, including conservation, planning and advocacy of natural resources, mapping of landscapes, and purchasing policies of large companies.
- The concept began to appear in discussions and policies of governmental organizations, NGOs and multistakeholder initiatives.
- The **International Union for Conservation of Nature – IUCN** has an important work with the determination of these areas;
- The **Forest Stewardship Council (FSC)** established criteria for the determination of high value conservation forests;

# HCVAs and the Convention on Biological Diversity

## → Biofuels and Biodiversity negotiations, COP 10 in 2010

7. *Invites* Parties, acknowledging different national conditions, other Governments and relevant organizations, bearing in mind ecosystem functions and services, to:

(a) Develop, national inventories so as to identify areas of high biodiversity value, critical ecosystems, and areas important to indigenous and local communities; and

(b) Assess and identify areas and, where appropriate, ecosystems that could be used in, or exempted from, the production of biofuels;

## → Negotiating for COP11 in October 2012

UNEP/WHO

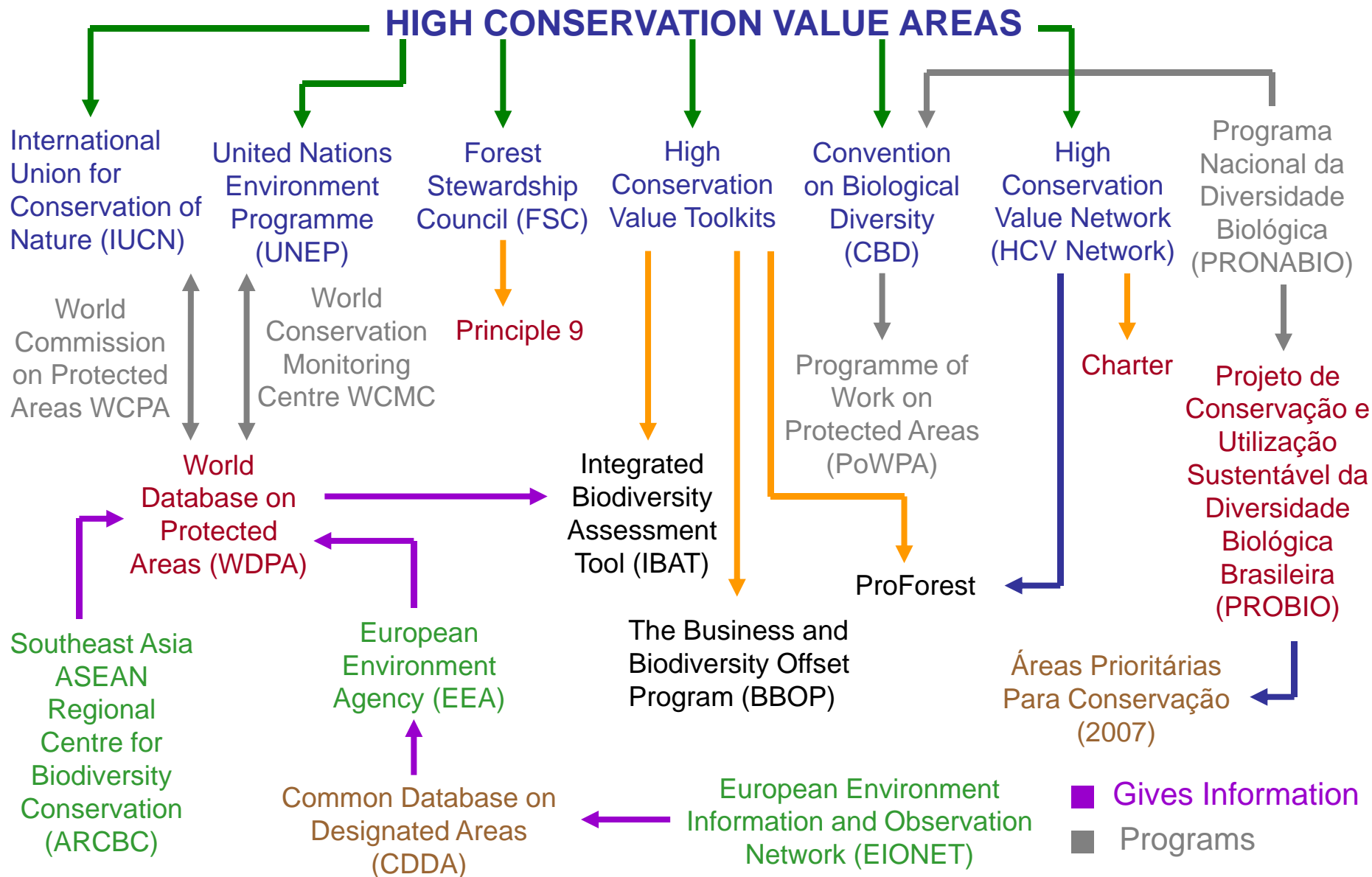
*[NEW PARA]* Welcomes the process to consolidate the standards and criteria for the national identification of sites of global biodiversity conservation significance, or key biodiversity areas, currently being convened by the IUCN World Commission on Protected Areas and the IUCN Species Survival Commission, and *invites* the IUCN to make the outcomes of this work available to the Executive Secretary to include in his ongoing work with regards to decision X/37;

John 7 Decision X/37?

# Highly Biodiverse Grasslands in the EU

- The Directive 2009/30/EC established rules and standards for the quality of biofuels and sustainability criteria;
- GHG emissions over the life cycle of biofuels, including the indirect effects of land use;
- Exclusion of areas with high biodiversity, including pastures since 23/01/2008: **highly biodiverse grassland**;
- Compliance with the requirements rests with the economic operators (voluntary schemes or bilateral/multilateral);
- The Commission has not yet defined how the concept of highly biodiverse grasslands would be treated;
- Production in the Cerrados and other types of Savannas (Africa) would be prohibited?
- The measure could be considered a legitimate objective in the context of the TBT Agreement?
- Necessity test?

# Who defines a HCVA?



- Standardizing bodies that have accepted and are complying with the Code of Good Practice (Annex 3 of the TBT) shall be acknowledged by the Members as complying with the principles of this Agreement;
- The ISO work:
- ISO 22000 Food safety management systems
  - Food safety is an SPS issue: boundaries of the ISO norm and the Agreement?
- ISO 14064-1:2006 Greenhouse Gases
  - GHGs emissions can be understood as a legitimate objective under the TBT, but can easily falls outside it´s scope?
- How the WTO will address cases like this?



# ISO and the Sustainability of Bioenergy

- ISO/PC 248 Sustainable criteria for bioenergy
- The need for an ISO norm assessing sustainability criteria for bioenergy was agreed;
- In 2010 the formal process for negotiating what would be the criteria was set up, with 4 Working-groups:
  - Group 1: Introduction and Scope, Inventory of initiatives, Terminology, Verification and auditing;
  - Group 2: GHG;
  - Group 3: Environmental, Social and Economic aspects.
  - Group 4: Indirect Effects
- Negotiations ongoing: expected norm in 2013.

# Reflections

- Some issues that may relate to the TBT cannot be seen as legitimate objectives and thereby regulated by the WTO;
- The biodiversity case with the High Value Conservation Areas can create barriers to trade very easily;
- How to handle WTO and MEAs like the CBD and UNFCCC?
- ISO norms creation goes beyond technical aspects;
- Since ISO norms are TBT compliant, it would be presumably difficult to question a measure in the WTO;
- The voluntariness of norms and standards need to be addressed: you are not obliged to comply with a standard or to have an ISO, but you may be required to if you want to sell your products;
- Private standards and the public role: how the WTO will judge a case like this?



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# Questions?

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