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**THE INSERTION OF SUSTAINABLE DEVELOPMENT IN THE BRAZILIAN
BIODIESEL PRODUCTION PROGRAM**

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1. INTRODUCTION

The objective of the present report is to analyze how the concept of sustainable development is reflected in the Brazilian legislation, particularly in the Brazilian National Biodiesel Production and Use Program (PNPB).

In order to reach this objective, the report is divided into six parts, in accordance to the Questionnaire of Commission I of the 26th European Council for Rural Law (CEDR) Congress. The report begins with the sustainable development concept in the Brazilian Constitution, treated in part 1, in which it is explained how the principles of environmental protection and economic development need to be reconciled, considering that they are both presented by constitutional norms, of highest level.

In part 2, it is verified how the biofuels legislation intends to reconcile social, environmental and economic aspects. Part 3 analyzes the introduction of sustainable development in the Biodiesel Program. The “Social Fuel” Seal, used as an instrument to the inclusion of sustainable development, is studied in part 4.

Part 5 shows how and why the “Social Fuel” Seal is the instrument used for the implementation of sustainable development in the context of the National Biodiesel Production and Use Program. The last part provides a few final considerations.

2. SUSTAINABLE DEVELOPMENT CONCEPT IN THE BRAZILIAN LEGISLATION

The concept of sustainable development found in the Brazilian legislation is inspired by the principles of the United Nations first Conference on the Human Environment held in 1972, in Stockholm. On that occasion, the environmental concern was introduced into the international arena, being the main object of political and juridical discussions.

Sustainable development was defined by the World Commission on Environment as the *development that meets the needs of the present without compromising the ability of future generations to meet their own needs* (OUR COMMON FUTURE, 1988). The objective of the Commission was to associate the environmental issue with the

developed countries model of development and industrialization (TRENTINI; SAES, 2010).

It was only in 1980 with the creation of basic guidelines for urban zoning in polluted areas that the concern with sustainable development was introduced into the Brazilian legislation (MILARÉ, 2005). Law 6.803/80 determined that areas of critical pollution for industry placement should be defined by the urban zoning plan. For this purpose, the law imposed the harmonization of the industrial activities and the environmental protection (BRASIL, 1980).

The concept of sustainable development was also treated by law 6.938/81. This law is based on the importance of the State in the maintenance of the ecological balance and it created the National Environment Policy (PNMA). On the same occasion, it instituted the evaluation of environmental impacts as an instrument for the preservation of essential ecological procedures (BRASIL, 1981).

The same law instituted the National Environment System (SISNAMA), a group of governmental organs and entities of the Union, State, Federal District and municipalities, all of them responsible for the protection and improvement of the environmental quality (BRASIL, 1981). The National Environment System was created in order to improve the connection between the institutions responsible for the conduction of the Brazilian environmental public policy (BARRAL; FERREIRA, 2006).

The concept of sustainable development was only introduced as a constitutional principle in 1988, with the promulgation of the new Constitution. The environmental concern is treated in article 225, which determines that *all the citizens have the right to an ecologically balanced environment, considered an asset of common use and essential to a healthy quality of life*. In accordance to the Constitution of 1988, the duty to defend and preserve the environment for present and future generations is attributed to both Public Power and collectivity (BRASIL, 1988).

Thereafter, attributing to the environment the constitutional degree of juridical good has established the problem of its harmonization with other values and rights recognized by the Constitution, among them the economic development (TRENTINI; SAES, 2010).

The economic development, treated in article 170, is founded on the *appreciation of the value of human work and on free enterprise, and it is intended to ensure the citizens a life with dignity, in accordance with the dictates of social justice* (BRASIL, 1988).

It thus can be observed that the environmental protection and the economic development are in the highest level of the Brazilian legal system, the Constitution. Constitutional norms are divided into principles and rules. However, this distinction is not necessary for the application of constitutional norms (FERREIRA FILHO, 2008). Otherwise, it must be mentioned that general principles are norms related to a specific field of law that regulates something to be realized and that the content of principles is mainly fulfilled when they are used in a specific context, being converted into juridical and public practices (COLLAÇO, 2010).

The main concern sought by the Constitution is the establishment of a common base in the normative instruments and in the instructions for the construction of federal, state and municipal environmental legislative. Considering that the concept of sustainable development originates from the harmonization of constitutional principles, its practice execution depends on an infra-constitutional legislation that regulates or imposes conducts that aim at the economic development and at the same time at the protection of an ecologically equilibrated environment.

In consideration to these two needs, the Brazilian government created, in 2004, the National Program of Production and Use of Biodiesel (PNPB). The PNPB proposes the development of an alternative and clean energy matrix, which is the biodiesel – thus guarantees the right to an ecologically equilibrated environment – and creates a public policy with emphasis on social inclusion and regional development – hence promotes the economic development.

The PNPB will be used as object of study in order to demonstrate how the concept of sustainable development is reflected in the infra-constitutional Brazilian legislation. Next items will discuss the biodiesel legislation, which has as objective the application of sustainable development in the Brazilian context.

3. THE INCLUSION OF SUSTAINABLE DEVELOPMENT IN THE BIOFUEL LEGISLATION.

Sustainable development is not only connected to aspects concerning the usage of natural resources, but also to those related to social and economic insertion of individuals. The concept frequently presents a proper dynamic, considering the conflicting aspects that should be taken into account when seeking sustainable development. When it comes to issue of energy, these conflicts are even more evident (TRENTINI; SAES, 2010).

The economic development of a country is intimately related to its energy production, which must be a main concern for the Public Administration, in order to serve the raise of the social demand. At the same time, sustainability is also a main concern.

For decades, petrol was the main energy matrix in the world. However, it is finite, expensive and responsible for many environmental impacts. Biofuels, on the other hand, are derived from renewable sources of biomass. In terms of sustainability, biofuels are extremely important by virtue of their renewability, aside from their capacity to be substitutes for high-polluting fossil fuels (COLLAÇO, 2010).

The adoption of modern techniques, the favorable climate and the large expansion of cultivable lands were responsible for the increase of the production and exportation of important cultivations in Brazil - among them rice, coffee and soybean. These factors related to the need of adopt alternative energy matrixes permitted the expansion of the sugar cane production, which made it possible for the country to become one of the world's major producers of biofuels, mainly ethanol and biodiesel (GRASSI NETO, 2010).

3.1. ETHANOL

Even though ethanol is not the focus of this report, it is worthwhile to briefly review the fuel's development. Ethanol has been used as a fuel in Brazil since 1925, when the first tests with the fuel were made in Rio de Janeiro, due to the introduction of the automobile in the country. Insofar as all the oil used in Brazil in the beginning of the twentieth century was imported from the USA, the shortage of fuels due to the world crisis in the early thirties required government measures for the compulsory inclusion of

ethanol: legislation imposed that the amount of ethanol blended should reach the percentage of 5% of all the imported gasoline (GRASSI NETO, 2010).

During the II World War, the percentage of blended ethanol was as high as 42% of the total gasoline imported. From 1950 to 1960, the low prices of petroleum in the international market made the usage of ethanol as a fuel less attractive. However, during the seventies, with the new international conjuncture formed by the oil crisis and the low of the sugarcane price in the international market, it became explicit for the Brazilian government the need for energy independence (GRASSI NETO, 2010).

The National Alcohol Program (PROALCOOL) was launched in 1975, by Decree 76.593/75 (BRASIL, 1975). The main objectives of the Program were to reduce the country's dependence on imported oil and to create a new market for sugarcane producers, stimulating the automobile industry to develop cars fueled exclusively by ethanol. The ethanol production rose successively until 1990, when the increase of the exportations of sugar and the shortage of the fuel endangered the initial objectives of the Program (EPE).

In 2003, the introduction of flex-fuel automobiles in Brazil - which enable the consumers to choose which fuel they will use: ethanol, gasoline or a blend of both - brought the National Alcohol Program to a new era and the ethanol production reached high levels again. From January to June of 2008, the sale of flex-fuel automobiles represented 84,7% of the total sales of automobiles in the country (EPE).

It is noticeable, on certain occasions, that some rules imposed by the government go further than the regulation of a determined sector. The government actions can create or eliminate a fuel market, and this is evident in the history of bioethanol. The stimulation of the production of bioethanol was a reaction for the high of the oil price. The National Alcohol Program was responsible for an important impact on the sugarcane national industry, due to investments made in the sector (TRENTINI; SAES, 2010).

3.2. BIODIESEL

On the other hand, biodiesel is a fuel obtained from raw materials such as castor beans, soybeans and palm oil (BIODIESEL, 2006). The National PNPB was launched in 2004, with the objectives of generating significant hard-currency savings for Brazil via the

reduction of imports of petroleum-derived diesel fuel, as well as helping to protect the environment and promoting social inclusion (BIODIESEL, 2006).

The implementation of the production and use of biodiesel in a sustainable way is thus the objective of this public policy. The focus is on social inclusion and regional development, by means of income and employment generation. It can be noticed that the main difference between the Proalcool and the PNPB is related to the fact that the first is a public policy created to fulfill the needs of the market, while the second is a policy of social inclusion.

Joint efforts by the Government in collaboration with the automotive and fuel industries, the agricultural sector and research and development, financing and regulatory bodies was the factor that made the authorization for the commercial use of biodiesel possible in Brazil (BIODIESEL, 2006).

The commercial use of biodiesel in Brazil is outlined by a specific regulatory framework. Factors taken into account include the wide variety of oilseeds available, measures to guarantee supply, compliance with fuel quality standards, and the Government's social inclusion policy (BIODIESEL, 2006).

4. THE CHOICE OF BIODIESEL FOR THE IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT.

State intervention is present at various levels in the regulation of the PNPB, from the imposition of guiding principles for the economic order to the elaboration of programs regulated by infra-constitutional norms. It can be verified in the Program that the implementation of sustainable development is a reflection of the State performance (TRENTINI; SAES, 2010).

Infra-constitutional legislation determines that national policies for the rational utilization of energy sources should increase in social, economic, and environmental basis, the participation of biofuels in the national energetic matrix. Constitutional principles of free initiative, social justice, and environmental preservation are thus found in the infra-constitutional level, harmonizing the precepts of the three pillars of sustainability: social, environmental, and economic (TRENTINI; SAES, 2010).

The normative framework of the Biodiesel Program was elaborated with the objective of constructing the basis of the program to be implemented, involving directly in this process the Ministry of Mines and Energy, the Ministry of Agrarian Development and the Ministry of Agriculture. The Ministry of Environment is responsible for the regulation of biodiesel in the range of its competence, controlling the activity, in order to avoid the degradation of the environment and of the natural resources of the country (MMA).

Public policies must provide the conditions for the biodiesel market to operate in an efficient way and to meet the goals of social inclusion promotion and the sustainable development of the country's poorest regions. Biodiesel regulation can be found in laws, decrees, administrative rules, resolutions and normative instructions.

For instance, Law 11.116/2005 regulates specificities for the registration of the producer or importer of biodiesel (BRASIL 2005). It is also outlined in this law the federal tax model applicable to biodiesel, which includes different rates for family farmers in relation to other producers (BIODIESEL, 2006).

Mentions to the Kyoto Protocol can be found in this law, as article 13 imposes the addition of biodiesel to oil in the terms the Clean Development Mechanism (MMA). The legislator concern for the social development is identified in articles 15 and 17 of Law 11.116/2005, since is determined the preference for the family farmers to grow the raw material used for the production of biodiesel (BRASIL, 2005).

Biodiesel is described by Law 11.097/2005 as

fuels obtained from a renewable and biodegradable source, used for internal combustion engines with ignition through pressure, that can replace, partially or entirely, diesel oil from a fossil source and that meets the technical specifications defined by the National Petroleum Agency (ANP).

In accordance to the prescription of the above mentioned law, the National Agency of Petroleum, Natural Gas and Biofuels (ANP) is responsible for the regulatory oversight and for the accomplishment of practices for the conservation and rational use of the natural resources. The ANP, linked to the Ministry of Mines and Energy, was implemented in Brazil in 1988. It is responsible for the regulation of the national policy in the energetic sectors of petrol, natural gas and biofuels. The main objective of the

agency is to guarantee the rational usage of natural resources and the environmental preservation, maintaining the equilibrium between the economic activities developed by the regulated sector and the environmental preservation in the places where these activities take place (COLLAÇO, 2010).

The Biodiesel Program is in accordance with all the principles and objectives of the National Energetic Policy, insofar as it reduces the national dependence on petroleum derived fuels, promotes the development, mainly in the poorest regions of the North and Northeast of the country, expands the market, and gives importance to a totally national energetic resource; protects the consumers' interests by reducing the petroleum dependence and provides a product with a better environmental quality and with guaranteed offer in the internal market; protects the environment, since it is a clean fuel and reduces the amount of gases that cause the greenhouse effect; promotes the conservation of energy, since this fuel is generated from a renewable process: the production of oleaginous plants.

It must be observed that the regulation of the sector is not only made exclusively via Laws emanated by the Congress. The Constitution attributes exclusive competence for the President of the Republic to regulate, by means of Decrees, about the organization and functioning of the federal administration. This way, it can be mentioned the Presidential Decree of July of 2003, which created the Interministry Group, which was responsible to present studies on the viability of the biodiesel as an alternative energy matrix and to propose, if necessary, the actions needed for the use of biodiesel.

The normative function of the Executive Power can also be expressed by means of Administrative Rules and Resolutions. These rules objective the faithful accomplishment of the law and they are emanated by the Public Administration, edited by other authorities other than the Chief of Executive. These acts cannot oppose law establishments, nor create rights, impose obligations, prohibitions or penalties that are not pre-established by law (DI PIETRO, 2009).

In this sense, the normative importance of the Public Administration organs is observed insofar as the law becomes complete by the edition of norms that make it feasible. This is how the organs and agencies achieve the legal specifications. In the case of biodiesel, administrative rules and resolutions issued by the ANP can be mentioned, since they

regulate the activities of biodiesel producers, set out specifications for the new fuel, and establish the distribution portion of the value chain. ANP Resolutions thus implement directives on biodiesel production and percentages of petro-diesel blends.

As example, Administrative Rule ANP 240/2003 regulates the utilization of non-specified fuels in Brazil; Resolution ANP 42/2004 deals with the commercialization of biodiesel and authorizes a 2% blend of biodiesel to diesel. On its turn, Resolution ANP 31/2005 regulates the realization of purchase auctions for the acquisition of biodiesel.

Other organs can issue resolutions, as the Brazilian Development Bank (BNDES), which determined the creation of the Program of Financial Support for Investments in Biodiesel, which provides financing for all stages of the productive chain (BRASIL, 2004).

On those occasions when the regulation is performed in the scope of a Ministry, being a purely administrative act, it is called Normative Instruction. The main Normative Instructions in the case of the PNPB are the emanated by the Ministry of Agrarian Development. Among them, Normative Instruction MDA 01/2005 and 02/2005 can be mentioned. They establish, respectively, criteria and procedures for granting the use of the Social Fuel Seal and for including projects of biodiesel production in the mechanism of the Social Fuel Seal. The Seal is the object of study on next item (BRASIL, 2005).

As can be noted, due to the fact that the sustainable development is a constitutional principle, it is understood as a directive that must guide the legal system, but depends on other norms in order to be fulfilled. For this reason, infra-constitutional laws describe the programs and incentives to be used with the purpose of harmonizing the economic development with the protection of the environment. The effectiveness of the constitutional principle is only reached via determinations emanated by the Public Administration – direct or indirectly – which serve to complete the law or to establish how it will be accomplished by the Administration.

5. THE “SOCIAL FUEL” SEAL AS INSTRUMENT FOR THE INCLUSION OF SUSTAINABLE DEVELOPMENT.

Some regulatory instruments were designed in order to promote social inclusion throughout the biodiesel’s production and value chain, as the already mentioned

differential tax regime recognizing the importance of oilseed production by family agriculture units – particularly castor beans and palm oil in the North, Northeast and the semi-arid regions (BIODIESEL, 2006).

Another instrument used in order to implement sustainability in the Biodiesel Agro Industrial System is the “Social Fuel” Seal. The Seal can be considered a brand certification. The main aim of the Social Seal is to ensure that the process of production of the oleaginous plants originated from family agriculture has determined characteristics. The brand of certification represents a better coordination of the production chain and the attempt to achieve family agriculture sustainability.

The usage of a brand of certification must be related to a regulation controlled by the brand owner, who will be able to impose sanctions to the usages in case of disobedience to the norms established. In the case of the Social Fuel Seal, the owner of the brand is the Ministry of Agrarian Development, which has the power to impose sanctions in case of disobedience in the usage of the brand of certification.

It can be considered an important model for the environmental management of the Agro Industrial System, insofar as it makes national norms and other regional rules harmonious in an internationally accepted language. The brand establishes a guarantee in the contractual relations among the actors in the several sections of the agro industrial systems.

The usage of the brand of certification depends on the observation of the norms established in the regulation – which is, in the Social Fuel example, the legislation. Otherwise, the quality indicative function will be damaged. The Ministry of Agrarian Development must control the correlation with what is imposed by the public regulation. It can be assumed that the brand of certification in the biodiesel productive chain will conduct to a more coordinated and competitive organization model, as long as it will enable a higher level of information about the attributes of the raw material required.

Considering this, the brand of certification in the Biodiesel Agro Industrial System represents, more than the proper certification, a form of state intervention for the implementation of public, economic and environmental policies. It can be certainly

considered a government strategy in relation to the international market. The brand of certification would serve as a reducer of protectionist measures based in the unsustainability of the productive process, as it is commonly claimed in the case of the brazilian bioethanol.

6. THE EFFECTIVENESS OF THE “SOCIAL FUEL” SEAL

The Social Seal establishes the conditions for industrial producers of biodiesel to obtain tax benefits and credit (MME). The main objective sought with the creation of the Seal is the promotion of a sustainable biodiesel production process for family agriculture, by fostering the production of raw material originated from this process (TRENTINI; SAES, 2010).

The Ministry of Agrarian Development via its Normative Instruction 01/2005 defined the “family farmer” as a beneficiary of the National Program for Strengthening Family Farming (Pronaf) and holder of a Declaration of Eligibility (DAP) (BRASIL, 2005).

In order to be designated as beneficiaries of the Pronaf, farmers need to fill the following requirements:

- they must possess at most four fiscal modules¹;
- they must have a gross income between R\$5 thousand and R\$110 thousand, with 70% of family income originating in agricultural and non-agricultural exploitation of the establishment;
- family labor must predominate, with salaried help being used only sporadically, according to the seasonal requirements of the agricultural activity, and with the possibility of a maximum of two permanent employees (BRASIL, 2006);

Among the functions of the Ministry, the following can be mentioned: the establishment of procedures and responsibilities for the concession, renovation and cancellation of the usage of the brand of certification for the producers of biodiesel; the evaluation and qualification of the biodiesel producers for the concession of the usage of the Social

¹ The rural module varies accordingly to natural and socioeconomic factors. In other words, it concerns the quantity of land necessary for a worker and his family (of four people) to be able to maintain themselves. In the municipalities where production conditions require less space, the rural module is smaller, whereas in regions requiring more space, the module is larger (BRASIL, 2009).

Fuel Seal; the control of the biodiesel producers to which the Seal was conceded. In this case, it is visible the inducement to cooperation (industry-producer) made by the government, by the means of incentives.

The Social Fuel Seal confers to biodiesel-producing companies the right to benefit from specific public policies aimed at fostering the production of renewable biodiesel along with social inclusion and regional development. The certification enables the commercial promotion of their production and free access to participation in biodiesel auctions (TRENTINI; SAES, 2010).

A mandatory clause which exists in contracts between biodiesel-producing firms and farmers establishes technical assistance with the prerogatives of food security, income generation and the reach of the sustainability of the property. These prerogatives are, in sequence, criteria of social improvement, economic conditioner and environmental preservation.

The instructions of the Ministry of Agrarian Development are made in order to stimulate the diversification of the production in the properties, as a manner of guaranteeing the food self-subsistence of the farmers' families. The production process must respect the culture and the knowledge of the family farmers, as well as the existent natural resources, and must be developed in a sustainable way, including appropriate use of soil, water, crop rotation and multiple cropping (BRASIL, 2009).

Besides the recommendations in relation to food security and sustainability in the production process, the MDA also incentivizes engaging women and youth in agriculture, in order to generate complementary income for families, through their participation of the farmer in the biodiesel Agro Industrial System.

The MDA also establishes minimal percentages of raw material that must be acquired by the family farmers, in accordance to the region in which they are inserted. Thus, in accordance to Normative Instruction MDA 01/2009, the minimum percentages are 30% for Northeast, Semi-arid, Southeast and South regions, and 15% for North and Center-West regions (BRASIL, 2009).

7. FINAL CONSIDERATIONS

Sustainable development is a constitutional principle in Brazil. The Constitution determines that all the citizens have the right to an ecologically balanced environment and that economic development is intended to ensure citizens a life with dignity, in accordance with the dictates of social justice.

Thus, sustainability is considered by the Brazilian institutional arrangement in its three dimensions: environmental, social and economic. The development of an alternative energy matrix is an example of how the sustainable development concept can be fulfilled.

Therefore, the PNPB aims to satisfy the two needs created with the insertion of sustainable development in the Brazilian Constitution: the maintenance of environmental equilibrium and economic development. For this reason, the objectives of the PNPB are related to the reduction of imports of petroleum-derived diesel fuel, and also with the generation of savings for the country and social inclusion, associated to the environmental protection.

State intervention is present at various levels in the regulation of the PNPB and it can be verified that the implementation of sustainable development is a reflection of the State performance. Biodiesel regulation can be found in laws, decrees, administrative rules, resolutions and normative instructions.

The Ministry of Agrarian Development (MDA) is the institution responsible to promote the sustainability in the context of the PNPB. The most efficient instrument used in order to implement sustainability in the Biodiesel Agro Industrial System is the “Social Fuel” Seal, which aims to ensure that the process of production of the oleaginous plants originated from family agriculture has determined characteristics. The Ministry also has the power to impose sanctions in case of disobedience in the usage of the brand of certification.

It can be concluded that the National Program of Use and Production of Biodiesel is an innovative public policy insofar as it creates a new alternative energy market and incorporates to it the family agriculture, thus attributing efficacy to the principle of sustainable development.

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