ITSSD Assessment of the new ISO 26000 Social Responsibility Standard

December 2005

Preliminary Conclusions:

1.   It may be possible to procedurally shape and/or delay the development of the ISO SR guidance standard at the national mirror and international levels.
2.   It may be impossible to prevent the actual adoption of an SR standard at the DIS and FDIS stages, *unless* the ISO voting rules are first modified to reflect only one vote for the European Community as a whole through its regional standards representative (e.g., CEN), as opposed to twenty-five separate votes representing the national standards bodies of each of the EU member states.
3.   It is likely to be difficult to reverse the new stakeholder engagement process that has been introduced at the ISO incident to the commencement of this SR standard initiative, though it may arguably be shaped by filing procedural objections, and by strengthening traditional ISO benchmarks for consensus.
4.   The real challenge is to prevent the new process from being expanded institutionally to all of ISO's *technical* standards work, and thereby from being incorporated within business contracts that reference or directly incorporate such standards as conditions of manufacture, sale, service, etc. This is likely to be quite difficult given the current efforts of governments, NGOs and UN agencies to incorporate sustainable development dimensions into *all* ISO technical standards.
5.   Further study and analysis of the evolving ISO SR operating procedures, the multi-stakeholder engagement process, and the ISO's general consensus procedures is necessary to determine the proper course of action and the appropriate actors with which/whom to collaborate.

Summary:

The ITSSD sets forth and documents in the following discussion its key concerns about the evolving ISO 26000 Social Responsibility standards initiative.

Dates to Consider:

The first working draft of the project plan on the new ISO Social Responsibility (SR) standard should be available during the spring of 2006. The first draft of the ISO 26000 SR standard should be available during November-December 2007, and a final draft standard available during

September 2008. The ISO 26000 should be published as an International Standard sometime during October 2008.[1]

U.S. TAG Industry Stakeholder Group Focuses Primarily on Substance of ISO SR Guidance Standard Rather than on SR Standard Development Process:

The U.S. industry stakeholder group, by far the largest of the U.S. Technical Advisory Group (TAG) to ISO 26000, has focused almost exclusively on the substantive standard to be developed, rather than on the *process* by which it will be developed.

> "Due to improved preparations for the WG meeting, better logistics at the meeting, and better overall management of the meeting, the WG was able to reach agreement on all three points at its second meeting. *Most importantly, the WG reached agreement on the design specification for the proposed guidance standard, which will serve as the outline for the document*. The design specification was finalized after three days devoted to going through the hundreds on comments related to the structure and substantive elements of the proposed guidance standard…**The agreed design specification conforms with all of the IOE's criteria for how the SR guidance standard should be structured and what it should cover.** It mandates a single document rather than a series of documents. It calls for *a guidance standard* rather than a certification standard and is based on **practical guidance** *rather than a management system approach*. And finally, it is addressed to all kinds of organizations rather than just companies."

According to the ISO Technical Management Board (TMB), the highest ISO technical governing body, the proposed ISO social responsibility standard 26000 "shall be an ISO standard providing *guidance* only, and shall not be intended for third-party certification.

> **'This International Standard provides guidance to enable an organization to formulate SR systems taking into account communication of stakeholders.**
> **It is not intended for certification purpose, or regulatory or contractual use.'"**

This language apparently fulfilled the stated goal of the U.S. TAG industry stakeholder group which, after having secured this language, [2] advertised the following:

> "[The _____Corporate Social Responsibility Committee] [r]epresented business in the second meeting of the International Standards Organization (ISO) Working Group on Social Responsibility, promoting an approach based on voluntary action, flexibility, and continued evolution of company practices. *Successfully advocated for an ISO guidance document on SR and against the development of a management system standard or other certification standards on SR…*"

However, there is reason to doubt their self-acclaimed success. Prior to the September 2005 Bangkok meeting, U.S. industry stakeholder group leaders believed that the best way to ensure against certification was to use Harvard Business School-type case studies. Case studies, which are essentially summaries showing how individual organizations of all types have prioritized, selected and integrated various codes and standards and information sources into SR programs,

have been used as examples of how to implement a given standard. One need only look to the role they played in developing the ISO 14000 environmental management system.

The pros and cons of using case studies was discussed previously via e-mail during May-June 2005 between various stakeholder groups, including foreign industry, international organizations (e.g., UNEP, ILO), CSR consultants and academics. They were also thought valuable by The Secretary of the Interim ISO Task Group (TG) 6 (Guidance for Organizations on Implementing SR), Prof. Josef Wieland, "an internationally recognized specialist [in] economics and enterprise ethics" at the German professional school Konstanz. During February 2005, Prof. Wieland was appointed to the DIN (German national standards organization) working committee on SR and to the ISO Working Group (WG). "To give very practical guidance [about] how to realize this principles and basic elements *we should add Case Studies*. They should reflect (if possible) the diversity of instruments, approaches etc. in organizations and fields of activities."

Apparently, the use of supplementary SR case studies "…follow[ed] the general pattern of ISO 14031 and 14032 [environmental management standards] of having guidance in one document and case studies supporting the guidance in another." According to one SR consultant involved in the e-mail exchange, case studies "provide…practical guidance on how to operationalize SR… Th[ey] do[] not produce any new management system, and certainly not anything new that is certifiable. Yet it does not ignore the role of existing management systems standards."

According to one U.S. industry stakeholder who supports the use of case studies in this instance,

> "…if an organization is struggling with bribery and corruption, they find it very useful to read how other organizations have successfully handled this issue. First, it is will be easier to convince their management to implement an approach that is proven versus some theoretical process that has not yet been applied. Second, no two organizations and their issues are the same. I like the approach of presenting them with a menu of issues/solutions. They can look […] and select those that are applicable to their organization and implement them. If you remember, both [representative 'A'] and [representative 'B'] proposed the concept of providing guidance on the basis of issues at the last WG meeting. I think that if we combine this with topics that […] lend themselves to a process description, we will create guidance that is very practical and allows a menu approach versus going down the one-size-fits-all road. Finally, *I think the beauty of this approach is [that] no one can use it for certification* since there would be portions of the guidance that you can't certify against (e.g *best practices or case studies*)."

However, not everyone who participated in that e-mail exchange agreed that case studies, even if secured, would prevent third parties from creating an SR certification system, to which industry would ultimately be subject. According to another U.S. stakeholder representing a U.S. subsidiary of a European company,

> "I just want to make the point[,] though recognising that it was decided that the guidance document should not be eligible for certification, that we can not exclude the discussion of certification. *Certification will be offered by consultancies when the guidance document is published and if we do not take an active stand on how a certification could or should be*

performed, then the credibility of the guidance document would disappear as it would be the certifier setting 'the standard'." [3]

Notwithstanding this debate, the TMB ultimately decided during the Bangkok meeting that only case *examples* should be integrated into the actual standard document - case studies could not be affixed as a standalone addendum.

The ISO Has Altered its Part of its Normal Operating Procedure to Develop an SR Standard:

With respect to the ISO SR standard development initiative, the ISO has decided to adjust its normal operating procedure to reflect the many differences between SR and the technical issues ISO normally addresses. "Recognizing that ISO will be entering into a new area of standardization, *in which it will need to engage new groups of stakeholders*, the Technical Management Board (TMB) has decided that, the work would be conducted in a working group (WG)[4] directly under the responsibility of the TMB."[5]

1) <u>The Working Group is co-chaired by representatives of a developed and a developing country</u> (e.g., with Jorge Cajazeira of *Suzano Pulp and Paper of Brazil* and *Staffan Söderberg, of Skanska of Sweden* serving in that role) – this is otherwise referred to as 'twinned leadership', which is intended to increase developing country participation in the ISO process; AND

2) <u>The Working Group is organized by stakeholder groups rather than national delegations</u>. Experts are drawn from six groups: industry, government, labor, NGOs, consumers, and other.[6] Each country can nominate six experts (one for each stakeholder group), <u>and international organizations with *liaison status* with the Working Group can each nominate two experts</u>. The International Organization of Employers (IOE) has *liaison ('Liaison D') status* and has named certain U.S. industry representatives as its two experts.

The TMB thought that this would provide "the most appropriate method of ensuring that all stakeholders can participate as individual experts on an equal basis in the Working Group…[I]t…also recognized that the generally desired outcome was for an International Standard providing guidance on SR. This implies that the normal ISO approval processes for International Standards will be applied…In accordance with the normal ISO working methods, the Working Group will be charged with developing *a draft standard that represents a consensus* of the views of the experts participating in the Working Group."

Furthermore, the national member bodies which nominate experts to the Working Group (WG) and its subsidiary Task Groups (TG) will also establish national mirror committees and these mirror committees will, in turn, establish national positions on the successive drafts developed

by these groups. The objective is to validate the 'consensus' reached in the WG through the national member body votes on the draft International Standard (DIS). The WG may, from time to time, seek to validate its emerging consensus against the national consensus positions of member bodies by requesting that a DIS be issued as a committee draft (CD). In that event, the *participating members will be invited to vote and comment* on the CD and the *D-liaison organizations will be invited simultaneously to submit their own comments*. Ultimately, the leadership of the WG will judge when consensus has been reached and whether there is a strong likelihood that voting on a DIS would be successful.

At that stage, the final draft will be submitted to the Central Secretariat for issuance as a DIS. The usual voting period and acceptance criteria as specified in the ISO/IEC Directives will apply. ***Although approval is determined by ISO member body votes, it is also expected that the provision in the Directives to seek full and formal backing of liaison organizations on DIS, be explicitly implemented in this particular case***.

If the DIS vote is positive, the WG leadership and the WG itself will need to address any comments received, according to their number and nature. The WG must then establish the text of the final draft International Standard (FDIS) and a report of voting indicating all comments received and the actions taken on them (and in particular the justifications for rejection of any comments).

If *unanimous* approval of the DIS is obtained, the document may proceed directly to publication. Otherwise, as is usual, the FDIS will be issued for voting, together with the report of voting on the DIS, in accordance with the ISO/IEC Directives, *again seeking the full and formal backing of liaison organizations*, and with the usual acceptance criteria applying. If approved, the FDIS, subject to any editorial corrections, will be published as an International Standard. The planned overall development timeframe is in accordance with ISO's 36-month standards development track.

According to the general ISO Directives, international and regional bodies possessing a specific interest and expertise in an area of standardization may form a *liaison* with a relevant ISO technical committee or subcommittee. Traditionally, they have been first required to apply for membership to a technical committee (TC), and must then apply for separate membership to each relevant sub-committee (SC) that it is interested in. There are *4 different categories of liaison* membership: 1) ***Category A***: liaisons are given *rights to attend meetings and nominate experts*, but *cannot participate in formal TC and SC votes*; 2) ***Category B***: liaisons are *provided with relevant documents*, but are *not supposed to participate actively in* the international meetings where most of the *drafting work* is done; 3) ***Category C***: liaisons that are ISO/IEC coordination bodies; and 4) ***Category D***: recently designated - permits interested organizations to *participate directly in working groups without necessarily becoming a member of the parent TC or SC*. Generally, A- and B-Liaisons operate at a higher level (e.g., with a TC or SC) than do D-

Liaisons (with a WG). This continues in the case of the ISO SR 26000, since the TMB is essentially acting as a TC.

Some NGO groups participate in ISO by becoming involved with their national standards bodies, while others participate through becoming international liaison bodies (typically of categories "A" and "B"). As noted above, the different "levels" of membership entail different rights and responsibilities.

The ISO Directives establish the procedure for voting in individual TCs and SCs. *Voting in TCs and SCs is limited to participating (P)-members*; *liaison organizations never have a vote in these cases.* Yet, as noted above, however, D-Liaisons can still hold up the consensus needed at the national and ISO WG levels to secure adoption of a DIS or FDIS, as noted above. In other words, D-Liaisons can have significant influence in the drafting of ISO standards, technical or otherwise. [7]

Narrow Initiative Masks Broader Purpose – ISO Process over ISO Product:

The ITSSD is convinced that governmental, NGO, and even some industry stakeholders located in Europe and in developing countries are more interested in establishing a new ISO *process*, than a new ISO standard.

SR-focused NGOs are skeptical about whatever ISO SR standard emerges. They don't want it to supplant, override or replace their own SR standards or to conflict with the universal principles contained within UN conventions and declarations, or those of other international organizations. They want to protect both their turf and the international labyrinth of rules thus far created. They want to prevent an emerging ISO SR standard from doing any harm to these existing initiatives. Examples of NGOs participating in the ISO SR standard development process include: The Global Reporting Initiative (GRI); UN Global Compact; Social Accountability International.

These views are well expressed in the ISO SR TMB's "New Work Item Proposal (NWIP) Document for ISO 26000.

> "…[It] is necessary to consider the activities of other bodies that have developed or are developing SR standards, norms, guidelines and tools. United Nations (Global Compact) and other inter-governmental organizations, e.g., ILO, OECD, UNHCR and UNEP, would need to be included in the process, in view of the fact that they already have or are developing international standards. With respect to the wide range of existing nongovernmental international SR initiatives such as the *Global Reporting Initiative (GRI), the Forest Stewardship Council (FSC), the Fair Labor Association (FLA),* these may also need to be considered as **their standards could be affected by the introduction of an ISO deliverable.** Some of these initiatives might also have expertise of use to ISO. In the end, an ISO SR deliverable should be compatible with and/or complementary to these other initiatives and preferably add value."

In addition to complimenting and avoiding conflict with such standards and principles, the NWIP states that the ISO SR standard should seek:

> "to foster greater awareness and wider observance of agreed sets of universal principles as expressed in United Nations conventions and declarations including the Global Compact principles and particularly the Universal Declaration of Human Rights, The International Labour Organization's Declarations on Fundamental Principles and Right at Work, The R io Declaration on Environment and Development and The United Nations Convention Against Corruption."

Furthermore, the NGOs have been quite articulate in spelling out how important the stakeholder engagement *process* is to ISO's work on SR.

> "ISO's work on CSR deliverables will be judged not only on the usefulness of its final products, but also *on the basis of its willingness to engage actively with a broad range of stakeholder*, and the effectiveness of the procedures and structures that it puts in place to facilitate this engagement process. At a time when the content of any CSR-related outputs is unclear, ___the guiding principle should be to identify and integrate "best practice" processes of multi-stakeholder engagement."___

Using the SR Standard Development Process to Redefine the Rules of Stakeholder Engagement for ALL ISO Standards Development to Compel Industry to Pursue Sustainable Development:

The ITSSD believes that the hidden purpose underlying the drafting of an ISO SR standard is to redefine and expand *the overall institutional process* of stakeholder engagement and all standards development at the ISO, to ensure that companies engaged in international trade begin addressing European public policy concerns, namely, implementing Europe's notion of sustainable development via the precautionary principle.[8]

This goal has been acknowledged by at least one European corporate sustainability leader, who happens also to be Vice Chair of the ISO SR Working Group.

> *ISO is an old organisation with old procedures* (sometimes called "Circus ISO"). It has produced 15000 standards, but ISO also starts to realise that there is a world outside ISO *and there is a need to change institution and introduce stakeholder processes, revising the organisation might be trigger for what is needed.* [9]

It has also expressed by Tom Rotherham, Co-convenor and Co-chair of the interim ISO SR task group (TG 3) responsible for creating operating procedures that will govern the ISO SR standard development process. Mr. Rotherham was recently nominated to serve as Co-convenor of the permanent TG 3. [10]

> "[There are] [t]wo main issues [-] how can the ISO standard on SR promote and push accountability and *how [can] the process from which the standard is developed...be accountable itself*...International standards are important in international trade and serve[] as vehicle for bring environmental issues into [the] WHO. *Institutional reform is needed for ISO if ISO was to move*

towards public policy standards. [And, there is an] *[i]ncreased need for creating an effective stakeholder process and to find a way to manage it...* **ISO has recognised SR as a new area and has also recognised the need for new ways to develop standards**. The ISO standards have influence and influence is power, so writing and setting standards is power and potential for influencing. Obviously then a balance of influence between stakeholder groups has to be introduced. So who is around the table, if the numbers are not equal at least influence has to be equal (weighing the votes etc.)." [11]

The connection between the ISO 26000 effort and sustainable development was recently discussed by the ISO/TMB/WG/SR itself within the April 2005 issue of ISO's Social Responsibility Newsletter.

> "Today, there is widespread concern among many stakeholder groups, including governments, non-governmental organizations, consumers, labour unions and the public at large that organizations should respect the social, economic and environmental dimensions that make up sustainable development, and behave in an ethical manner. *ISO's examination of the SR issue has certainly been in the context of a general recognition that SR is an integral part of sustainability. This recognition was articulated at the 1992 Rio Earth Summit on the environment* which actually focused on a broader set of issues, including poverty reduction and social development. As more and more organizations decide that they must address the principles of SR, there is a growing need for tools to help them implement SR related practices."

Furthermore, this view has been expressed by a group of prominent international SR and sustainable development-focused NGOs who participated in the ISO TC 207 – 'Sustainable Development', and helped to develop the ISO 14000 environmental management standards. They argue that the ISO SR standard now being developed should focus more narrowly on industry stakeholders i.e., it should be really be about *corporate social responsibility – CSR*. They also argue that it is necessary for SR to be viewed in terms of CSR and to be linked with *sustainable development*, in order for industry (including both multinationals and their small, medium and micro-enterprise suppliers) to be more easily held accountable to society.

> *"...[W]e expect SR standards to address an organization's contribution to the balanced promotion of all three pillars of sustainable development*: economic growth, social development and environmental protection...[Beyond]...the UN Millennium Development Goals...SR also entails activities ranging from purely altruistic, one-off behavior, to long-term efforts to address stakeholder expectations, ethical obligations, legal requirements and universal principles. Fundamentally, an organization cannot define its social responsibilities on its own – an active dialogue with other parts of society is critical."

> *"The current conception of SR is heavily influenced by the concept of sustainable development.* Sustainable development is most often broken down into three dimensions: economic, environmental and social (or what has been described by some as "profit, planet, and people"). These dimensions have a wide range of aspects that make the scope of SR very broad. SR can involve many different subjects and issues which can be referred to as components or aspects."

According to these NGOs, since "international standards have important public policy implications", i.e., they have an impact on *sustainable development*, it is no longer tolerable that

the international standards development *process*, in general, remains dominated by industry. "Processes that lead to standards that are used in public policy are held to higher levels of accountability than those that lead to 'non-policy related' technical standards."

They argue, in effect, that since industry is part of and must meet the expectations of the broader society which 'licenses' them to operate, broader multi-stakeholder engagement in the policy-related international standards development process is necessary. According to these groups, it can not only help industry to "understand society's expectations" with respect to SR, but it can also help them in "implementing activities to deliver on these expectations…[J]ust as no organization can define its social responsibilities on its own, the private sector cannot define SR standards on its own either."

Furthermore, these groups, focusing on 'why' and 'how' companies are motivated to follow 'voluntarily' standards, admit that they are seeking additional means to influence them.

> "Standardization…engages the private sector in a way that no other process is doing...For instance, *a buyer might demand compliance with a standard **as a condition of sale***. In many cases, compliance with standards may be an economic imperative, particularly for small, medium and micro enterprises (SMMEs) and companies in developing countries."

> "*Multi-stakeholder engagement* is a central theme of the *corporate social responsibility* agenda. CSR calls for businesses to be responsive, answerable and accountable, not only to their shareholders, investors and lenders and regulators, but also to their "stakeholders" — employees, consumers, community members and policy-makers, among others."

Consequently, they seek to 'persuade' industry and the public that it is 'smart business' for companies to undertake multi-stakeholder engagement, since it helps them to: 1) manage business and brand reputation (risk); 2) strengthen internal management systems; 3) reduce staff turnover and attract the best possible employees; 4) enhance community, shareholder and regulator trust which, in turn, enhances a company's ability to gain access to capital; 5) promote and support stable social relations at the local level; and 6) strengthen the so-called *'social license to operate'.* They also argue that, at the macroeconomic level, multi-stakeholder engagement strengthens the functioning of markets by providing greater public access to information. Lastly, these groups also claim that a new ISO multi-stakeholder engagement *process* will serve the institutional trade capacity-building needs of developing countries, which otherwise would not have had an opportunity to participate in the ISO international standards development process.

If successful, this back-door effort of using the ISO 26000 SR standard development process to establish a new *institutional* multi-stakeholder engagement *process* paradigm at the ISO will have significant repercussions. There will be little to prevent the same *process* paradigm from being used with respect to each and every new *technical* standard that the ISO will develop in the future. Indeed, this new paradigm could also be utilized each time the ISO technical committees

and subcommittees and their mirror national standards bodies review existing technical standards, i.e., approximately every five years or so. (If the relevant technical committee or subcommittee decides that a revision is needed, then this becomes a new NWIP).

This effort to incorporate notions of sustainable development and the precautionary principle into ISO technical standards is already underway. The ITSSD has examined the ISO business plans defining the scope of the work for at least seven different technical committees. It has found that these business plans incorporate, to varying degrees, EU notions of 'sustainable development', 'sustainability' ('for future generations'), 'environmental friendliness' and 'social', environmental, or 'cultural' code language that implicitly refers to process-based environmental product stewardship/life cycle assessment requirements, and the need to conduct a hazard rather than risk assessment of substances and products. However, they contain little, if any, mention of economic cost benefit analysis. These listed notions arguably run counter to the bedrock WTO principles of sound or best available science, economic cost-benefit analysis and technical performance.[12]

Furthermore, if this effort is successful, it will perhaps also have a negative impact on the *domestic* standards work of the U.S. national representative to the ISO-IEC (i.e., the American National Standards Institute (ANSI)), and its nationally recognized U.S. private standards body members. According to Dr. Ruth Hillary who seemingly favors and awaits such diffusion,

> "The challenge is to get the national members and standards bodies to mirror the coming reforms of ISO as they are the provider of constituent people who write the standards and vote on them, and actually have nation standards committees to comment on the standards subsequently…Normally organisations are invited to participate based on interest and expertise. ISO Management standards broadened this somewhat and became open to a wider number of organisations, …this will create problems at a national level and change composition of ISO… **The difficultly is that this is a consensus building process**. *Previously the consensus had to be build between national/country views. But with the ISO 26000 and its stakeholder approach the consensus has to be build between stakeholder views.*"[13]

Lastly, it cannot be overemphasized that the long-term goal of the SR-CSR-Sustainable Development movement participating in the ISO 26000 SR guidance standard development project is to create new 'soft' international law. A recent November 2005 article entitled, "The Future of CSR will Mirror the Health of Society: Pondering the Evolution of CSR",[14] surmises how CSR will look 10 years from now. It predicts that CSR will evolve gradually as it permeates and pervades business-business relationships (contracts – conditions of manufacturing, sale, service, etc.) around the globe. It also predicts that, as societal expectations of business simultaneously rise, national and state legislatures will increasingly be called upon to enact CSR standards into 'hard' enforceable laws of business conduct, and that this will eventually extinguish the need for CSR standards such as ISO 26000. The article's executive summary says it all:

"The author first establishes that *the future of market societies is not sustainable*, for governments, which are suppose to be democratic, have partnered with big capital to pursue their very private interests and have abandoned their responsibility to procure the welfare of all ranks of society. *Today, the goal of this partnership is to obsessively pursue, with a very short-term vision, the greatest possible shareholder value, regardless of the social, economic and environmental impact. Thus, the author foresees that this ethos will be radically transformed by society to build a new paradigm that*, coinciding with White's third scenario, *redefines the purpose of business*…The author argues that, given the pressing social and environmental decay, society will not allow the current ethos to prevail, and *it is already seeking to build an ethos of real and direct democracy, participative and bottom up, that places social welfare above the private interest. **In this way, the future of CSR, as such, will disappear to assimilate itself to the paradigmatic shift in which social welfare becomes the primary purpose of business, governed by universal laws and standards that rule its activity.***

Yet, the author deems that this will not occur before the term of one generation, for building a truly democratic ethos entails redefining the pillars of society, from democracy, liberalism and the purpose of business to individualism, solidarity and the precedence of the community to create an entirely new culture for the 21st Century and beyond. *Thus, this shift, which is already in motion, will be accomplished gradually as more and more people worldwide take conscience of the unsustainability of the current ethos and of the urgency to build a new paradigm to bequest to future generations…[In] this post-CSR transformational scenario, then the UN Global Compact, the GRI, the SAI 8000, the OECD Guidelines for MNCs, **the upcoming ISO 26000 and anything else would become a moot issue. These are all CSR tools of the current Darwinian era.** Why would they maintain a valid purpose if, as he also envisions, the new design principles would find their way into law? If they become law in an era of global markets these principles would become part of all applicable international legislation and would have to be ratified by all nations by enacting them into their own constitutions. **There would be one universal set of principles and one body of law** –a universal legal framework with norms– **that governs how business and the market operate** so that they truly act with the welfare of society as their preeminent goal."*

Utilizing the ISO Notion of *Consensus*-Based Process to Promoting Broader Multi-Stakeholder Engagement Procedures:

The first TMB/WG/SR meeting took place in Salvador, Brazil, 7-11 March 2005. At that meeting it issued a resolution creating Task Group (TG) 3 - 'Operating Procedures' (OP). TG3 was charged with: 1) addressing the comments received before the 1st meeting relating to operating procedures that have not already been considered; 2) receiving and responding to questions on the application or interpretation of procedures; 3) making recommendations, if necessary, on revised or new procedures to the chairs in consultation with the Chairmen's Advisory Group (CAG)[15] to be presented to the WG for approval; and 4) compiling a consolidated set of WG operating procedures. It was determined that the ISO Central Secretariat would co-chair this TG, that all recommendations of the TG OP would be submitted to the WG for approval, and that any special procedures should be submitted for approval by the ISO TMB.[16]

At the Brazil meeting, the TMB/WG/SR issued a resolution (Res. 21) indicating that "the foundation for its operating procedures during the SR standards development process is the

ISO/IEC Directives, Part 1." It then issued another resolution (Res. 22) "adopting the following operating procedures for decision-making in the WG and all of its subsidiary bodies: There will be *no voting* in the WG or in any of its subsidiary bodies. All decisions will be made on the basis of **_consensus_** [17] as defined in the ISO/IEC Directives". As a result, the TG 3 Chairs must be notified by TG experts of any sustained opposition at the meeting at which the decision is taken, before determining the existence of a consensus.[18] This requirement, itself, entails identifying who the 'experts' are, and to which stakeholder group(s) they belong.

Furthermore, the TMB resolution instructed the WG and all TGs to establish a *process* by which decisions can be appealed on procedural grounds. Where experts *at the TG level* have objections on the application of the WG operating procedures, they should lodge an appeal with the WG. Appeals on application of operational procedures *in the WG* are to be made to the TMB. Whether such processes have yet been established is subject to question.

Following the subsequent Bangkok meeting, the ISO/TMB/WG SR then issued a resolution stating that operating procedures adopted by 'consensus' in TG 3 will, at the discretion of the WG Chairs in consultation with the CAG, be treated as provisional, *until such time as they are addressed in the WG, i.e., until they are either adopted or rejected.* TG 3 was given the sole mandate to develop an operating procedure on media participation in working sessions, though *TG 3 does not have the mandate to act as implementing body for this or any other operating procedure.* TG3 was also directed to circulate all of the latest draft procedures to the communications task group (TG2) for a one month comment period, and to coordinate closely with the TG 2. Lastly, TG 3 was directed to register all WG 'experts' *with a particular interest* in this operating procedure. The ISO/TMB/WG SR also noted that TG 3 had agreed to follow a general approach to internal procedures through which TG 3 Convenors would seek to confirm 'consensus' within TG 3 by correspondence.

Unfortunately, the operating procedures proposed by TG 3 (and there are many) remain only in draft form – they have not yet been finalized by the WG or the TMB. Many comments have been received and responded to, and need to be reviewed. In addition, the operating procedures concerning how to arrive at balanced stakeholder and 'expert' participation, how chair advisory group appointments are made and alternates selected, and the operating procedures concerning the scope of media participation, have not yet been finalized. All that is certain is that the process by which the final OPs themselves will be adopted, as well as the process by which the ISO SR standard itself will be adopted, will be determined pursuant to the ISO concept of 'consensus'.

However, the ISO notion of consensus is itself being targeted for reform by NGO groups.

> "*Efforts to review ISO processes for the purposes of any CSR-related standards processes must also be linked to a fresh approach to applying the principle that lies at the heart of ISO decision-making*; namely *the principle of consensus*…the ISO definition allows for consensus to be achieved: 1) in the face of sustained opposition *opposition by 'unimportant'* parts of the concerned

interests; 2) in the face of sustained opposition to issues deemed '*insubstantial*' (the definition is silent as to whose notion of 'substantial' should prevail); and, 3) potentially, in the face of *any* opposition from 'concerned interests' who are *not present in the negotiating room*. In practice, there have been many instances of ISO working groups and subcommittees putting decisions to a vote; in some cases, those votes are open only to those members who are in attendance at a particular meeting...*[T]here is clearly scope for the application of the ISO version of the "consensus" principle to undermine principles of "equitable" stakeholder engagement.*"

The USG Has Decided Not to Participate in the ISO 26000 SR Standard Development Process, But Perhaps Can Facilitate the Tabling of Amendments to the ISO's Procedural Voting Rules, as Well as Changes in U.S. Representation:

USG interest in and enthusiasm for the ISO 26000 SR standard has also been lacking. ITSSD discussions with representatives from EPA, DOC and DOS confirm this. Apparently, there have been many interagency meetings about whether to participate in the development of this standard, given that it would be designed to apply to ALL organizations, including governments.

However, by participating, the USG believes it would effectively be giving credence to the emerging standard, and perhaps subject the USG to ISO jurisdiction. The USG may also be concerned that its participation would be interpreted as sanctifying the emerging broad multi-stakeholder engagement *process* itself. [19]

Yet, the USG could conceivably participate indirectly behind the scenes. According to Staffan Soderberg, Vice Chair of the ISO SR Working Group, "[t]he ISO 26000 guidance standard structure was decided to guide the drafting, *but anyone can be drafter and send comments*." This leaves open a number of possibilities, including those lying outside the scope of this initiative.

There is Currently No U.S. Leadership in the ISO 26000 SR TGs, Committees or Working Groups:

No U.S. industry member of the U.S. TAG on ISO/SR has yet decided to put their name forward to serve as leader of an ISO SR TG or subgroup. Apparently, they are reluctant to pay the approximately $80,000 per year needed to participate in the meetings called for by the ISO Secretariat, Work Groups or Task Groups. During this past June, the American Society for Quality (ASQ), Administrator of the U.S. TAG on Social Responsibility, had submitted financial estimates reflecting this as the approximate amount needed to administrate the TAG. This estimate was shared with ANSI. [20] It is now feared that the failure of ASQ (and ANSI before it) to secure a U.S. industry member as ISO/TMB/SR/ TG leader will significantly harm any chances that the USTAG position will be heard, let alone, influence the drafting of an ISO 26000 SR guidance standard.

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[1] Generally, there are six stages to the development of an ISO standard: Proposal – New Work Item, Preparatory – Working Draft, Committee – Committee Draft, Enquiry – Draft International Standard, Approval – Final Draft International Standard, and Publication – International ISO Standard, each taking approximately six months to complete. *Progression of a document from one stage to another is governed by ISO rules.*

[2] Industry stakeholders of the U.S. TAG had previously advanced a clause that stated: "ISO 26000 is designed to be used solely as a guidance document. Any attestations regarding conformity to this International Standard are therefore inappropriate. Statements regarding conformity to this International Standard in any promotional and communication material, such as press releases, advertisements, marketing brochures, videos, staff announcements, logos, slogans, and catch lines for diverse media ranging from print and broadcasting, to Internet and multi-media applications, to product labels, signs, and banners are inconsistent with the International Standard and therefore should be avoided."

[3] Apparently, other industry stakeholder members had expressed this skepticism. The editor of an industry newsletter who had monitored their discussion, indicated that the industry group is anxious about the possibility that NGOs could develop loopholes that would provide for certification and conformity assessment.

[4] Generally speaking, ISO Directives 1.11.1 explains that a "working group comprises a restricted number of experts individually appointed by the P [participating] members, A-liaisons of the parent committee and D-liaison organizations, brought together to deal with the specific task allocated to the working group. The experts act in a personal capacity and not as the official representative of the P-member or A- or D-liaison organization by which they have been appointed."

[5] The vast majority of ISO working groups (WG) exist under a parent ISO technical committee (TC) or sub-committee (SC). *The ISO/WG/SR is unusual in that it operates under the direct responsibility of the ISO Technical Management Board (TMB).* As a result, while the ISO Directives include some guidance on WGs, it is not always very detailed and not always enough to determine the intent of the Directives. It is therefore useful in some situations – such as this – to also review the guidance in the Directives on TCs and SCs. The ISO Directives sets out the following general principles when appointing Chairs and Secretariats; The parent committee is responsible for appointing Secretariats; Secretariats are responsible for nominating Chairs, who must then be approved by the parent committee. If there are multiple applications for a Secretariat, the parent committee is responsible for making the final decision; - The ISO Directives also state that the Convenor of a WG is to be appointed by its parent committee. In the case of the ISO/WG/SR, the TMB is the parent committee (the TMB appointed the ISO/WG/SR Secretariat to ABNT-SIS). In the case of Task Groups (TGs), the ISO/WG/SR is the parent committee. Since the TMB has given the ISO/WG/SR the freedom to propose its own procedures, the ISO/WG/SR can appoint TG Convenors according to those procedures that it determines most appropriate.

[6] "The innovation came with the new approach by ISO to ensure that the WG SR standard will benefit from broad input by all those with a serious interest in social responsibility. This is being achieved by the balanced representation of six designated stakeholder categories: industry, government, labour, consumers, nongovernmental organizations and others, in addition to geographical and gender-based balance."

[7] For example, the ITSSD has found that the EU Commission has served and continues to serve as a 'liaison' ('advisory') organization to the ISO/IEC. In this role, the EU has been actively assisting European ISO/IEC members to further European economic and technology interests, i.e., by using the ISO process to incorporate the precautionary principle and EU sustainable development notions within a growing number of proposed and adopted *international* standards. In fact, the ITSSD has found that the EU Commission currently serves as an organization in liaison to **91** technical committees *and to* multiple subcommittees thereof, where most of the work at ISO/IEC is known to be performed. It is common knowledge that technical committees possess the discretion to engage accredited liaison organizations as they deem necessary. The U.S. government, by contrast, is not listed as a liaison organization to the ISO. Participation by certain individuals within a few of its agencies in ISO technical work is currently limited to serving within ANSI's International Policy Forum, hardly a match for direct and plentiful EU government involvement. On June 3, 2005, the ITSSD provided this information as part of written testimony submitted at the request of senior congressional staff to Vernon J. Ehlers (R-MI), Chairman, House Science Committee, Subcommittee on Environment, Technology, and Standards.

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[8] We stand by this conclusion even though the term sustainable development will not be defined in the ISO ISO 26000 SR standard document itself.

[9] Remarks made by Staffan Soderberg, Vice-Chair of the ISO Social Responsibility Working Group, and Sustainability Manager at the Swedish construction and engineering firm Skanska AB, at an Accountability panel discussion entitled, "Standardising Accountability – Can ISO Standards Deliver Accountability?", convened on 10/4/05 in London, England.

[10] Rotherham has acted as interim Co-Convenor/ Co-Chair of ISO/TMB/WG/SR TG3 since March 2005. He is said to be knowledgeable about the differences in procedures between various international standardization bodies. He is also said to have facilitated other multi-stakeholder initiatives including the UNEP Sector Report Card initiative (ongoing). Tom has also convened or chaired numerous multi-stakeholder meetings within the UN family, at the WTO, and at Chatham House.

[11] Remarks made at the same Accountability panel discussion noted in fn 9. Mr. Rotherham works for the International Institute for Sustainable Development (IISD), a Canadian-based NGO, at both its Canadian and European offices. According to Rotherham, the "[o]penness of the decision making process and small details as to the role of the observers [must still be resolved]. Observers are ultimately those who have the money to attend the meeting, so they are either consultants or industry representatives from the west…ISO has liaison bodies and its is not clear how the difficulty of liaison members potentially outvoting members will be resolved."

[12] See, e.g.: the business plans to: ISO/TC 47 – 'Chemistry'; ISO/TC 61 – 'Plastics'; ISO/TC 155 – 'Nickel and Nickel Alloys'; ISO/TC 183 – 'Copper, Lead, Zinc and Nickel Ores and Concentrates'; ISO/TC 156 – 'Corrosion of Metals and Alloys'; ISO/TC 122 – 'Packaging'; and the ISO Committee on Consumer Policy (COPOLCO) – ANSI announces 7/13/04, 'ISO to Develop Guidelines for Social Responsibility'; ISO/TC 34 – 'Food Products'). Some of these business plans draw express linkages between current EU regulatory and standards regimes (e.g., RoHS, CEN/TC 261, CEN/TC 275/WG 11[12]), EU notions of sustainable development, United Nations programs and agencies (e.g., UNEP/SAICM, UNIDO, UNCED, Agenda 21, GHS, UNECE) and international standardization. Others are implicitly based on proposed or adopted EU precautionary principle-based regulatory regimes. (See, e.g. EU Eco-labeling Program, REACH, WEEE and IPP; Directive 91/338/EC (restricting use of cadmium as a pigment, as a stabilizer in plastics and as plating of metallic products or components of products); EU risk assessments on cadmium, nickel, zinc and mercury); 2000/60/EC (EU Water Framework Directive) and COM(2003) 423 final (daughter directive of EU Air Quality Framework Directive (each addressing pollution caused by heavy metals); 2003/0282 (COD) – (Proposed EU Batteries Directive – Inter-institutional File 16303/04 – 12/21/04); 1999/31/EC (EC Landfill Directive; COM(2003) 379 final (Proposed Revision to EU Regulation on Waste Shipments); Directive 2004/12/EC – 'Packaging and Packaging Waste'); EC Communication COM(2002)347 final – ('Corporate Social Responsibility – a Business Contribution to Sustainable Development' – new document to be released 3/05). And, still others are implicitly based on disputed OECD studies and (CSR) guidelines, U.N. Global Compact Principles and UNEP treaties (e.g., Basel Convention, Rotterdam PIC Convention).

[13] Remarks made by Ruth Hillary at the same Accountability panel discussion noted in fns 9 and 11, supra. Dr. Hillary is represented as a leading researcher in the field of environmental management and corporate sustainability with a particular interest in the role of environmental management systems in smaller firms and the value of partnership approaches to integrated supply chain management. Dr. Hillary previously worked at the *European Commission's Industry and Environment Division of DG XI where she worked on the draft Regulation: Eco-management and Audit Scheme (EMAS)* during its progress towards adoption and application. She was a member of the UK Government's Advisory Group on EMAS (AGEMA) and the *UK National Co-ordinator for a European Commission DG XXIII Euromanagement - Environment Pilot Action on EMAS* in small and medium sized enterprises (SMEs).

[14] The article was authored by Alvaro J. de Regil, is Executive Director of the Jus Semper Global Alliance. It refers to and goes beyond an earlier essay authored by Allen White, Senior Advisor to Business for Social Responsibility.

[15] The SR CAG assists the chairs and secretaries of the WG in tasks concerning co-ordination, planning and steering of the WG's work or other specific tasks of an advisory nature. It advises the WG on strategic and critical issues. It also advises on balanced representation in the task groups. However, it is neither a governing nor a decision making body. The CAG is comprised of WG chairs and secretaries, TG convenors, up to 2 representatives (preferably one from developed and one from developing country), nominated by each stakeholder category, and additional representatives if necessary to ensure balance of representation (gender, regional distribution, etc.) designated by the chairs. The CAG convenor is the WG chair. The (CAG) was created during the Brazil April 2005 meeting. It consisted of 3 Task Groups: TG 1 – Funding and Shareholder Engagement; TG 2 – Communication; TG 3 – Operating Procedures and three interim task groups to prepare the SR standard. The three interim task groups were made permanent during the Bangkok meeting, so that there are now 6 Task Groups: new TG 4 – Scope, SR Context & SR Principles; TG 5 – Guidance on Core SR Subjects/ Issues; and TG 6 – Guidance for Organizations on Implementing SR.

[16] Between the Brazil and Bangkok meetings, the TG 3 Convenors wrote to the TG 3 experts about how: 1) the operating procedures would be a living document, that could be reviewed and revised if it did not work well; 2) the TMB vested TG 3 with the authority to propose *any* operating procedure they wanted within reason; and 3) the ISO Central Secretariat Co-Convenor would review each of the final drafts and tell the Convenors which could or could not be forwarded to the TMB for approval. They also indicated that "in the absence of an ISO/WG/SR operating procedure, the default is the ISO-IEC Directives and the ISO Supplement".

[17] Decisions on the development of ISO standards are made according to the principle of 'consensus'. ISO defines consensus as: "General agreement, characterized by: 1) *the absence of sustained opposition*; 2) to *substantial issues*; 3) by *any important part of the concerned interests*; and 4) *by a process* that involves seeking to take into account the views of all parties concerned and to reconcile and conflicting arguments. Note: *Consensus need not imply unanimity*." The ISO Directives establish the procedure for voting in individual TCs and SCs. Voting in TCs and SCs is limited to participating (P)-members; liaison organizations never have a vote in these cases. In the case of TG 3,

[18] **It is the responsibility of the chair/convenor, where necessary in consultation with the Secretary and WG leadership**, to decide if the *sustained opposition* is: 1) *on a substantial issue*; 2) *by an important part of the concerned interests.* In deciding on whether the objection is made by an important part of the concerned interests, the Chair/Convenor should consider developed/developing country and stakeholder representation. The Chair/Convenors's decision and its context will be recorded. The WG or TG will establish a mechanism to enable the Chair/Convenor to identify which experts are from which stakeholder group and/or country.

[19] Lack of USG participation at the September 2005 Bangkok meeting was documented by an 'other' stakeholder group reporter affiliated with an industry newsletter: "While government seems respectably present in the ISO/TMB WG on SR compared to the other stakeholder groups, about 70% of the nations from which delegates are arriving in Bangkok are not going to be accompanied by a government representative. The US is not alone in this respect. *Washington chose not to participate because the administration is squeamish about appearing to surrender sovereignty in the field of social responsibility.* (Oddly enough, the US government did not feel the same way about environmental management. The US Environmental Protection Agency played an important role in the US delegation that worked on the ISO 14001 standard.) The government delegates are not of one cloth, a factor that tends to make for a more robust presence. There is at least one government agency enrolled whose main constituents are either consumers, NGOs, labor, or the environment. Some sub-national government entities are also represented."

[20] CSA America, Inc., a U.S. standards writing body for appliances and accessories fuelled by natural, liquefied petroleum and hydrogen gases, also submitted a general cost estimate. "The estimated annual costs for CSA America administration of the ISO SR US/TAG [was] $115,000… At this time without an official [Request for Proposal] RFP along with signing of confidentiality/legal papers, CSA America can not provide a detailed budget or proposal."