

Background

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How Corporate Social Responsibility (ISO 26000) Mandates Undermine Free Markets

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Abstract: *Activist groups and statist bureaucrats at the United Nations and around the world are seeking to impose corporate social responsibility (CSR) requirements on firms through the International Organization for Standardization's proposed ISO 26000 standards, scheduled to be approved in Copenhagen in mid-May 2010. While CSR is promoted as a path to laudable social goals (such as health care, education, and infrastructure construction in developing countries), in practice it can devolve into a thinly disguised form of coercion requiring companies to transfer some of their profits to host government authorities or to organizations or people favored by them. For these and many other reasons, the U.S. government and the American business community should resist any efforts to make ISO 26000 standards mandatory.*

Bad ideas rarely die a permanent death in the United Nations. The idea of behavioral norms for corporations gained some support in the U.N. in the 1970s, though no code was adopted. The idea has since developed and resurfaced as a part of the evolving concept of "corporate social responsibility" (CSR). CSR's basic thrust is to "encourage" profitable multinationals to assume some of the costs for health care, education, or even infrastructure construction in developing countries. In reality, CSR has devolved into a thinly disguised corrupt practice in which companies "purchase" the right to operate in a country by transferring some of their profits to host government authorities or to persons or organizations favored by

Talking Points

- Activist groups and statist United Nations bureaucrats want to mandate corporate social responsibility (CSR) requirements for private companies through the International Organization for Standardization's ISO 26000.
- Although CSR promotes laudable social goals, in practice it can be a tool for government corruption, coercion, and bribery.
- ISO standards are frequently used to buttress protectionist cases at the World Trade Organization. ISO 26000 would only aggravate this trend.
- People, not corporations, are responsible for meeting social needs. If they and the governments that represent them prosper because private companies operate more efficiently in economically free countries, they will be in a much better position to meet social needs.
- Corporations can be most helpful to developing countries through trade and investment, which create sustainable, private-sector jobs.
- The U.S. government and business community should resist mandatory CSR standards.

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them. This comes perilously close to “corrupt payments to foreign officials for the purpose of obtaining or keeping business,”¹ which are outlawed by the U.S. Foreign Corrupt Practices Act.²

Although some delegations at the U.N., particularly the U.S. delegation, have resisted the idea of U.N. standards for corporate behavior, many prominent corporations, guided more by their public relations departments than by their corporate

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boardrooms, have embraced the idea. That decision may be returning to haunt them through the International Organization for Standardization (ISO) in the form of the “voluntary” ISO 26000 standards on CSR, which are set to be adopted at an international conference in Copenhagen in mid-May 2010.

Many American companies, and the millions of people who own stock in them, are likely unaware of the extent and larger meaning of these pernicious CSR efforts. U.S. businesses report that ISO standards have been the root cause of most “technical barriers to trade” cases brought before the World Trade Organization (WTO). The ISO 26000, which is a quixotic attempt to impose impractical and ultimately unworkable bureaucratic solutions on what are essentially political problems, will likely precipitate a flood of new WTO cases that would harm U.S. companies and consumers.

CSR deviates dramatically from the primary purpose for which private companies exist, which is, as Milton Friedman argued, to maximize the returns on capital investment for their shareholders. Companies do perform vital public service by providing high-quality goods and services to consumers at the

lowest cost with the highest possible profit. This is their main responsibility to society.

At the core of CSR, however, is the “socialist view that political mechanisms, not market mechanisms, are the appropriate way to determine the allocation of scarce resources to alternative uses.”³ This detracts from efficiency and wastes resources, and may even reduce the provision of the social goods championed by CSR advocates. When people prosper because companies operate efficiently and enjoy economic freedom, they have more time, talent, and resources to help the less fortunate—and will do so much more efficiently than government can. The best way corporations can help people anywhere, and especially in developing countries, is to go about their business, trading and investing and creating the sustainable jobs that improve livelihoods.

For these and many other reasons, the U.S. government and America’s business community should resist any efforts to make ISO 26000 CSR standards mandatory.

The Evolution of Corporate Social Responsibility

The modern concept of corporate social responsibility began to emerge in the United States in the late 1960s. CSR, as initially understood, was a combination of best corporate practices—which amounted to little more than obeying the law—and commitments to respect internationally recognized human rights, even those not codified in national law.

Another aspect of early CSR efforts involved some oligopolistic U.S. corporations that sold politically sensitive products, such as cigarettes and gasoline, and faced activist critics who targeted them with intrusive government regulations and increased taxes. To deflect the critics, the companies hired Madison Avenue firms to design public relations campaigns to highlight their good works.

1. Export-Import Bank of the United States, “Foreign Corrupt Practices Act (FCPA) and Other Anti-bribery Measures,” January 11, 2008, at <http://www.exim.gov/products/policies/ForeignCorruptPracticesActFCPAandAnti-briberyMeasures.cfm> (April 1, 2010).

2. 15 U.S. Code §§ 78dd-1, *et seq.*

3. Milton Friedman, “The Social Responsibility of Business Is to Increase Its Profits,” *The New York Times Magazine*, September 13, 1970, at <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html> (April 28, 2010).

Some oil and auto companies sponsored municipal arts and music events. Some tobacco firms made high-profile contributions to minority and women's organizations and sponsored high-visibility events such as professional tennis tournaments.

As it evolved over the years, the concept of good works was broadened to include funding for health care, education, or even infrastructure construction in poorer countries. The CSR concept was readily welcomed in Europe, where governments have always been more heavily involved with private businesses—in some cases as owners. While not traditionally the responsibility of the private sector, such CSR expenditures could sometimes be justified on the corporate bottom line by their impact on workforce productivity.

For cash-strapped developing countries, the lure of a revenue-enhancing “principle” (as CSR was viewed) that allowed them to tap corporate coffers was irresistible. If the concept had stopped there, CSR would have been little more than an additional corporate tax. As such, it would certainly have had negative effects, including the possibility of companies relocating to more business-friendly countries, though some additional revenues might have continued to flow to government coffers. Activists, however, saw CSR as a chance to highlight the “evils” of corporations and capitalism and to attack the profit motive that drives their growth. As is often the case, these efforts found fertile ground at the United Nations.

The international campaign against multinational corporations began in earnest in 1974, with the creation of the U.N. Centre on Transnational Corporations (CTC). The centerpiece of the CTC's work program was promotion of a U.N. code of conduct for transnational corporations (TNCs). The

code, ostensibly aimed at increasing the negotiating power of developing-country governments vis-à-vis transnational corporations and preventing alleged abuses, quickly devolved into a blatant attack on the free enterprise system. Not surprisingly, it became one of the most controversial items on the U.N. agenda and was never adopted.

Regrettably, some countries did adopt its anti-business ideas, with tragic results. As then-Heritage Foundation analyst Juliana Geran Pilon noted in 1987, “What is most serious is that the policies and actions of the CTC, as of those of many other U.N. organs, impede economic growth in developing countries. The CTC penalizes those nations and societies that are the globe's poorest.”⁴ While no one would argue against efforts to eliminate abusive labor standards, environmental damage, or actions that violate universally recognized fundamental human rights, the CTC had mutated into something else entirely, becoming a focal point in the ongoing struggle between capitalism and socialism. Although the inevitable negative economic effects should have been immediately obvious, U.N. bureaucrats only slowly realized that the CTC's anti-business activities were hurting the economic development of the very countries they were trying to help.

The CTC was eventually folded into the U.N. Conference on Trade and Development (UNCTAD), but the attack on corporations continued. The TNC code of conduct first mutated into Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights⁵ and then into the U.N. Global Compact.⁶

The Global Compact

U.N. Secretary-General Kofi Annan launched the U.N. Global Compact in 1999. As a number of scholars have noted, the 10 principles of the Global

4. Juliana Geran Pilon, “The Centre on Transnational Corporations: How the U.N. Injures Poor Nations,” Heritage Foundation *Background* No. 608, October 5, 1987.
5. Carolin F. Hillemanns, “UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,” *The German Law Journal*, Vol. 4, No. 10 (2003), at http://www.germanlawjournal.com/pdfs/Vol04No10/PDF_Vol_04_No_10_1065-1080_European_Hillemanns.pdf (March 17, 2010), and Tagi Sagafi-nejad and John H. Dunning, *The UN and Transnational Corporations: From Code of Conduct to Global Compact* (Bloomington, Ind.: Indiana University Press, 2008).
6. For example, see U.N. Global Compact, “Global Compact and ISO Clarify Positions, Stress Complementarity,” July 17, 2009, at http://www.unglobalcompact.org/NewsAndEvents/news_archives/2009_07_17.html (March 19, 2010).

Compact⁷ share many of the core elements of its predecessors, the code of conduct and the Norms on the Responsibilities of Transnational Corporations. All stress labor and environment themes that involve heavy state control or regulation, and all have a vaguely anti-private-sector, pro-big-government bias. Economist Daniel Drezner calls the Global Compact another one of the U.N.'s "grandiose initiatives that never quite live up to their billing."⁸

Activists are increasingly dissatisfied with the Global Compact's voluntary nature and are pushing to make the CSR standards compulsory.

According to its Web site, the Global Compact is an attempt by the U.N. to persuade businesses to align "their operations and strategies with ten universally accepted principles in the areas of human rights, labor, the environment and anti-corruption."⁹ U.N. bureaucrats administering and promoting this Global Compact see themselves as facilitators among various stakeholders, including business, civil society, labor groups, and governments. In this role, the U.N. Global Compact has assumed for itself a critical position in pushing business to act "responsibly" by "contributing to broad-based development and sustainable markets."¹⁰ In practice, this means the Global Compact seeks to "encourage" profitable multinationals to assume some of the costs for health care, education, and infrastructure construction in developing countries.

Activists are increasingly dissatisfied with the compact's voluntary nature and are pushing to make the CSR standards in the Global Compact compulsory. Amnesty International, Greenpeace, Oxfam, and ActionAid have complained that the voluntary Global Compact lacks "teeth" and has "done little to improve companies' practices."¹¹ Aftab Alam Khan of ActionAid has called for "legally binding regulations to control corporate activities with respect to human rights."¹² Roberto Bissio of Social Watch believes that consumer protection requires mandatory supervision as well as mandatory codes of conduct, and faults the Global Compact for not requiring them.¹³ The latest effort in this campaign is an attempt to adopt international standards for CSR through the ISO. These standards are meant to be the vehicle for realizing the activist groups' goal of a mandatory Global Compact.

The International Organization for Standardization

The ISO is a nongovernmental organization (NGO) based in Geneva, Switzerland. Founded in 1947, it is composed of representatives from national standards organizations, and it has become a highly respected international body for setting standards. ISO industrial and commercial standards are often adopted as law by national governments or integrated into treaties governing commerce, investment, and other economic activities.

The ISO 26000 benchmark guidelines on standards for global corporate social responsibility are

7. U.N. Global Compact, "The Ten Principles," at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (March 17, 2010).
8. Wagaki Mwangi and Hans Peter Schmitz, "Global Compact, Little Impact?: Explaining Variation in Corporate Attitudes Towards Global Norms," paper presented at the Annual Convention of the International Studies Association, February 28–March 4, 2007, at http://faculty.maxwell.syr.edu/hpschmitz/Human_Rights_2009/Mwangi_Schmitz_GlobalCompact.pdf (April 28, 2010).
9. U.N. Global Compact, "Overview of the UN Global Compact," updated June 30, 2009, at <http://www.unglobalcompact.org/AboutTheGC/index.html> (April 21, 2010).
10. *Ibid.*
11. Laura MacInnis, "U.N. Told to Overhaul Corporate Responsibility Pact," Reuters, July 4, 2007, at <http://www.reuters.com/article/idUSL04856760> (April 1, 2010).
12. *Ibid.*
13. Press release, "Press Conference on Global Financial Crisis by Civil Society Organizations," U.N. Department of Public Information, April 20, 2009, at http://www.un.org/News/briefings/docs/2009/090420_Global_Crisis.doc.htm (April 28, 2010).

scheduled to receive final approval at the plenary meeting of the ISO's Social Responsibility Working Group in Copenhagen in mid-May 2010. The process to adopt the new guidelines has been underway for several years, pushed by the same activist groups with the same statist philosophy that were behind the earlier TNC code of conduct and the current Global Compact effort. The guidelines have moved to the Draft International Standards stage, the last step before adoption as full-fledged ISO standards.

In the United States, the creation, promulgation, and use of ISO standards is overseen by the American National Standards Institute (ANSI), not the federal government. The group's Web site says that ANSI "empowers its members and constituents to strengthen the U.S. marketplace position in the global economy while helping to assure the safety and health of consumers and the protection of the environment."¹⁴

However, when confronted by the controversial ISO 26000, ANSI decided to dump this hot political potato into the lap of the American Society for Quality,¹⁵ which is most famous for its Six Sigma Black Belt quality-control certification program. The U.S. government is also represented on U.S. delegations to ISO conferences and has participated in meetings about the formulation of ISO 26000. Interestingly, the lead U.S. agency on ISO 26000 is the Environmental Protection Agency, one of the most activist regulatory agencies in the federal government.

ISO Standards for CSR: A Recipe for Trouble

The ISO 26000 standards on CSR run 100 pages, and its chapters cover a broad array of

business-related topics, including organizational governance, human rights, labor practices, the environment, fair operating practices, consumer issues, and community involvement and development.¹⁶ The blurry standards of ISO 26000 are in sharp contrast to previous industry-specific standards put forth by the ISO that do not presume to mandate anything more revolutionary than, for example, a "voluntary consensus [on] sanitary standards and accepted practices for equipment and systems used to produce, process, and package food, beverages and pharmaceutical products."¹⁷

Moreover, the various sections of ISO 26000 are politically charged. Each chapter seems to recite anew a laundry list of grievances and daunting societal problems facing impoverished, developing countries before establishing vague, all-encompassing, and impossible-to-meet responsibilities to be imposed on each multinational firm seeking to do business in any given country. The multinational business or corporation is expected to foot the substantial bills for rectifying the seeming endless list of problems outlined in each ISO 26000 chapter.

Although ISO 26000 promoters insist that the "guidance standard will...be voluntary," and that it "will not include requirements and will thus not be a certification standard,"¹⁸ the international civil servants and NGOs advocating a more compulsory approach to CSR standards clearly have a long-term game plan¹⁹ to ensure that ISO 26000 is applied as forcefully and as widely as possible.

Once the ISO 26000 is approved, the governments of many developing countries and some European welfare states will likely pass domestic legislation legally mandating the ISO 26000 stan-

14. American National Standards Institute, "About ANSI Overview," at http://www.ansi.org/about_ansi/overview/overview.aspx?menuid=1 (February 9, 2010).

15. American Society for Quality, Web site, at <http://www.asq.org> (February 9, 2010).

16. International Organization for Standardization, *Draft International Standard ISO/DIS 26000: Guidance on Social Responsibility*, 2009, at http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935837/ISO_DIS_26000_Guidance_on_Social_Responsibility.pdf?nodeid=8385026&vernum=0 (February 13, 2010).

17. American National Standards Institute, "Accredited Standards Developers," April 16, 2010, p. 1, at <http://publicaa.ansi.org/sites/apdl/Documents/Standards%20Activities/American%20National%20Standards/ANSI%20Accredited%20Standards%20Developers/APR2010ASD.pdf> (April 20, 2010).

18. International Organization for Standardization, "Social Responsibility," April 9, 2008, at <http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/home.html> (April 28, 2010).

dards for any multinational company wishing to do business in their countries.

In developed countries, activist NGOs will likely launch a campaign to shame any corporation that is not ISO 26000-compliant. Indeed, enterprising lawyers and other professional contractors adept at fulfilling government regulations are already busy establishing “ISO 26000 Certification Programs” for corporations, even though nothing in the ISO 26000 is supposed to be mandatory. As Jim Kelly of Global Governance Watch has noted, NGOs dedicated to “fairer globalization”—such as London’s New Economic Foundation through its “(un)Happy Planet Index”²⁰—will be quick to mount public relations campaigns to pressure multinational corporations to become ISO 26000-certified or face negative public relations consequences from “environmentalists, organized labor, human rights advocates, and government officials.”²¹

Moreover, many nations—particularly those in Europe and in the developing world—will likely implement ISO 26000 standards through domestic statutes requiring any company doing business in their countries to comply with the standards and assume all the associated costs of compliance. This could raise the cost of trade and business around the world. Moreover, according to Adam Greene of the U.S. Council on International Business, who is co-chair of the U.S. ISO 26000 Technical Advisory Industry Sub-Group, ISO standards have been the root cause of most “technical barriers to trade” cases brought before the WTO.²² Greene adds that ISO 26000 is a quixotic attempt to find technical solutions to political problems, and will be fertile ground for future WTO cases.

What Businesses and the U.S. Government Should Do

The ISO Central Secretariat has already collected comments on the ISO 26000, but it is not too late to influence the contents and direction of the document before its scheduled mid-May 2010 adoption.

- Congress and the Obama Administration, supported by the U.S. business community, should register their skepticism about the value of ISO 26000 and clearly announce that the U.S. will vigorously oppose any efforts to impose mandatory standards on U.S. companies.
- U.S. businesses should exercise extreme caution in accepting vague standards of corporate social responsibility, such as the U.N. Global Compact and ISO 26000.
- U.S. businesses should focus on their primary purpose of providing high-quality goods and services to consumers at the lowest cost with the highest-possible profit for their shareholders. Corporations can best help people in developing countries by trading with them and investing in their countries, which will create sustainable private-sector jobs.

Conclusion

The current global economic recession has often been attributed to a lack of regulation on international finance, business, and investment. This is wrong and pernicious. As the Heritage Foundation’s and *Wall Street Journal’s* *Index of Economic Freedom* has long demonstrated, sustainable economic growth and prosperity requires free markets. Needless regulation on business, even for a seemingly positive purpose such as corporate social responsibility, threatens the recovery sought by every nation.

19. For example, see International Organization for Standardization, “Statement by the Leadership of the ISO 26000 Working Group,” December 17, 2009, at <http://www.scribd.com/doc/24282781/2009-12-17-Statement-by-the-leadership-of-the-ISO-26000-Working-Group> (February 9, 2010).

20. New Economics Foundation, “The (un)Happy Planet Index 2.0,” *Policy Innovations*, August 13, 2009, at http://www.policyinnovations.org/ideas/policy_library/data/01540 (February 9, 2010).

21. Jim Kelly, “UN and ISO Cooperate on Global Corporate Social Responsibility Standard,” Global Governance Watch, December 30, 2009, at http://www.globalgovernancewatch.org/spotlight_on_sovereignty/un-and-iso-cooperate-on-global-corporate-social-responsibility-standards (February 9, 2010).

22. Adam Greene, telephone conversation with author, January 5, 2010.

Programs such as the U.N. Global Compact and ISO 26000 are emblematic of a growing trend toward increasing government regulation and intervention in business that threatens the free-market capitalism that has engendered prosperity in America and around the world. The main purpose for the existence of private companies and corporations is to maximize the returns for their shareholders. They play a fundamental role in the efficient functioning of a market economy. This view contrasts sharply with the philosophy behind CSR—a “socialist view that political mechanisms, not market mechanisms, are the appropriate way to determine the allocation of scarce resources to alternative uses.”²³

Businesses should be wary of this trend, particularly when they are pressured through international organizations that often lack transparency and accountability. In reality, CSR has often devolved into naked coercion to compel companies to transfer

some of their profits to host government authorities or to organizations favored by them in order to operate in the country.

As long as CSR initiatives are discrete, transparent, and voluntary, they have the potential to make a positive contribution to employees, employers, consumers, and investors. Each business should assess the extent and value of CSR efforts based on their own situation. However, CSR advocates and governments that seek business financing for community and national development programs are not satisfied with voluntary efforts. The business community should unite against compulsory CSR standards that would undermine the core mission of business: increasing profits and providing value to shareholders.

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23. Friedman, “The Social Responsibility of Business Is to Increase its Profits.”