Joint ANEC[1] / ECOS[2] / Pacific Institute[3] Communiqué

ISO TC 207 'Environmental Management' gives NGOs the cold shoulder

NGO proposals for improved procedures slammed down after five years of negotiations

1. Summary

A ten-year process aimed at more balanced stakeholder participation and decision-making – intended to strengthen the voice of NGOs in ISO's Environmental Management Committee (Technical Committee (TC) 207) – met an abrupt end at the committee's plenary meeting in Bogotá, Columbia in June 2008.

A mixed committee – the so-called NGO-CAG Task Force - presented one of its final deliverables: a pair of operating procedures to improve balanced stakeholder involvement in the committee's standards development. Created in 2003, this joint group consisted of representatives from NGOs (including ANEC and the Pacific Institute) elected by an NGO Forum and the TC leadership (the Chairman's Advisory Group, CAG). Their thorough review of the existing ISO Directives had revealed deficits and opportunities to improve the situation for minority views by providing operational guidance in addition to and complementing ISO rules.

NGOs have decried on many occasions the business community's dominance in standardization. The basic principles of international standardization work – consensus-building based on national positions

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– suggest that standards are based on broad support by all parties concerned. But the actual work is dominated by the business community which has the most to gain from influencing the content of the standards, and which has the resources available to participate. NGOs' minority positions at the national level (if present at all) are often "filtered" by the system: although their direct participation at the international level is possible, such "liaison organizations" have few rights.

The two operating procedures developed by the Task Force were intended to improve this. One addresses liaison organizations (international or broadly-based regional organizations that participate in TCs, such as ANEC and ECOS), while the other facilitates more balanced stakeholder participation and decision-making in standards development. The proposals were based on procedures recently approved in another ISO group working in the field of "Social Responsibility" (ISO WG SR), a subject quite close to environmental management. Both proposals, if adopted, would have improved to some extent the rights and position of NGOs and other minorities. The ISO Central Secretariat considered these draft procedures in conformity with the ISO Directives.

These documents met with opposition, mainly from several national standards bodies, particularly from the bigger European ones which had declared their fundamental disagreement to the process at its onset and subsequently took the lead in opposing it. As a result the documents, which represented numerous years of work, were rejected out of hand accompanied by an empty expression of appreciation for the substantial efforts of the Task Force.

As a gesture, an alternative to the operating procedures was suggested: an "NGO Contact Group" advising the committee chair on NGO matters. The chair would be in control of the Contact Group's composition and activities (the details are not yet clear), it cannot be accepted as an alternative to the objectivity of the rejected procedures.

The Bogotá meeting should be considered as a crushing defeat for consumer and environmental interests in standardization and its outcomes will not serve to enhance the faith of NGOs in the process. ANEC, ECOS, and the Pacific Institute stress our strong disappointment and disapproval at these developments. The three organizations call upon the ISO leadership to take action to ensure that the positive developments introduced in the context of ISO's work on social responsibility will be broadened to cover all ISO TC work in similar areas of fundamental public interest.

2. Background

Both consumer and environmental NGOs have long wrangled with the issue of business dominance and the marginalization of public interests in standardization. Decision-making is based on the principle of national consensus building and forwarding national "consensus" positions to the international level, claiming that all stakeholder positions have been adequately reflected. However, frequently this is not the case. Typically national mirror committees are primarily composed of business representatives, with NGO and other public interest representatives either in a minority position or not represented at all. Hence, the national "consensus position" is often little more than a

business perspective in disguise. In addition, national standards bodies are free to choose the composition of their delegations which are typically primarily composed of business interests. As far as ISO TC 207 is concerned, business means primarily industry coupled with environmental consultants and certifiers.

3. Alternative approaches

As a result of the mistrust of the NGO community concerning the traditional procedural rules of standardization, a different route was chosen when ISO initiated work in the field of social responsibility (SR). This ISO project relies on a stakeholder-based approach. Six different stakeholder categories are defined: industry, consumers, government, labour, NGO, SSRO (Service, Support, Research and Others). A national standards body can nominate only one person per stakeholder category to the Working Group (WG). All expert members of the WG act in a personal capacity and can express their (stakeholder) perspective. The stakeholders form caucuses which hold meetings along with WG meetings and develop joint positions on certain key issues (e.g. whether a working document should be upgraded to a higher level). It should be noted that the ISO WG SR falls back to the traditional standardization procedures once the document leaves the working-draft level and reaches higher-document stages. From this point in time, only national positions can be forwarded to the Working Group, with experts at the international level continuing to incorporate comments in revisions to the standard.

Several operational procedures have been developed in support of the ISO SR process. Due to the lack of resources of some stakeholders, these procedures have not yet led to a fully balanced representation in the WG SR in practice, but there is broad agreement that they constitute a major improvement compared to the traditional way of ISO standards-making. Two of these procedures formed the basis of the documents prepared by the ISO TC 207 NGO-CAG Task Force.

There are a number of institutions which have developed procedures following a multi-stakeholder decision-making process, such as those under the umbrella of the International Social and Environmental Labeling Alliance (ISEAL, e.g. Forest Stewardship Council, Social Accountability International, Fairtrade Labelling Organizations International, etc.). They enjoy a generally higher level of support among civil society representatives than ISO committees following the national (business-led) consensual process.

4. ISO TC 207 NGO-CAG TF

After several years of debate on NGO issues within the TC, a document entitled "Increasing the Effectiveness of NGO Participation in ISO TC207"[4] was agreed upon by NGO representatives in 2003.

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[4] See: http://www.pacinst.org/inni/NGOParticipation/N28Final.pdf

It outlined major difficulties of NGO participation in ISO standardization and called for complementing ISO procedural rules with specific measures to strengthen the NGO voice. This document was the starting point for the work of the NGO-CAG TF created in the same year. It consisted of four NGO representatives and four members of the committee's governing body (dubbed the CAG) and was chaired by the Pacific Institute, U.S..

This TF came up with a work plan which contained several proposals. The most important being the following:

Proposal 1: TC207 should assign the Task Force responsibility for reviewing the areas of the ISO Directives that pertain to stakeholder involvement, and subsequent to the review, for developing operational guidance for TC207 in ways of improving its stakeholder involvement.

This proposal achieved an approval rate of 81% of the committee's member bodies when balloted in 2004, with opposition from seven countries, including the biggest European countries.

4.1. Review of ISO Directives and recommendations

Subsequently, an analysis of the ISO Directives was carried out, led by the ANEC representative. This analysis showed numerous shortcomings and inconsistencies in the ISO procedural rules, including the definition of one of the key concepts of standardization work – the consensus principle. Its definition – absence of "sustained opposition" – implies a broad agreement of all parties involved. However, it is nowhere explained what precisely "sustained opposition" is and how it can be expressed. The positions of liaison organizations are of minor relevance in this context, as they do not have any formal means to express consent or dissent. However, the ISO Directives also provide that "technical committees and subcommittees shall seek the full and, if possible, formal backing of the organizations having liaison A status" (those participating at the TC or SC level) – without giving any detailed guidance when and how this should be done.

This discussion paper also identified possible complementary provisions not in conflict with the ISO Directives. The key recommendations for operational guidance were:

4.1.1. Consensus building

- A written procedure regarding how TC 207 participants can formally express a "sustained opposition" or "substantial objections" vis-à-vis the ISO Directives (e.g., simply by indicating this in the relevant section of the written comments or when verbal comments are made).
- A clear statement that this procedure is meant to be used by P-members and liaison organizations.
- A statement that all substantial objections are to be treated equally irrespective of their origin and that an effort should be made by the TC's or relevant subgroup's leadership to resolve all conflicts as far as possible.

4.1.2. Balanced representation – national input and decision-making in the ISO structure (TC, SC, WG, and other groups)

- Guidance on current practice regarding stakeholder involvement at the national level (ongoing activity of the NGO-CAG TF).
- Guidance on communication of minority (e.g., stakeholder) positions not covered by national positions during enquiries on draft standards. (Such communications would be circulated at the international level for informational purposes.)
- A stakeholder categorization scheme that can be used to track stakeholder participation at TC 207-related meetings (ongoing activity of the NGO-CAG TF).
- Guidance on stakeholder composition for national delegations to ISO/TC 207 and its working parties taking into account the stakeholder categories as defined in the NGO-CAG Task Force's *Guidance on Stakeholder Categories in ISO/TC 207.*[5]
- Operational procedures for WGs on how to identify different stakeholder needs and how to achieve an outcome of the discussions which is as balanced as reasonably possible.
- Guidance on the composition of the ISO TC 207 CAG and any other existing advisory group with respect to the balance of interests.

4.1.3. The role of liaisons

- The introduction of an indicative (informal) voting procedure for A-liaisons regarding preliminary work items, approval of new work items, draft standards, and resolutions.
- The requirement that the negative indicative votes of A-liaisons are resolved in an equally conscientious manner as negative votes of NSOs.
- The requirement that any decision of the TC is reviewed in case of a significant number of negative indicative votes from A-liaisons.
- A-liaisons to receive CDs, DISs, FDISs for comment and the compilation of comments following the enquiries.

4.1.4. Appeals

- Establishment of an informal conflict resolution mechanism that does not involve the Chief Executive Officer of ISO and would stay strictly within TC 207.
    - o Such mechanism could be accessed by all P-members and A-liaisons.
    - o It would cover only substantive objections to draft standards which have been notified during enquiries on draft standards (CD, DIS) and resolutions.

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[5] The ISO WG SR has defined six categories of stakeholders: Consumers, Government, Industry, Labour, NGO and Other (renamed in Service, support, research and others). It is recommended that national delegations consist of one person per stakeholder group. If a stakeholder group does not want to make use of the right to be represented in the WG, another stakeholder group may fill in, but there is a maximum of two representatives per stakeholder group.

o It could work at the levels of the WGs, the SCs, and the TCs by establishing small dispute arbitration panels.

The NGO-CAG TF approved this document in early 2006. The recommendations for operational guidance and the analysis of ISO rules were circulated to ISO TC 207 members in April 2007 (document ISO TC 207 N806).

Based on this document, the TF elaborated two operational procedures for some of the aspects identified above.

4.2. Suggested operational procedures

The two suggested operational procedures were based on their ISO WG SR counterparts and have gone through a consultation procedure where some of the elements were already eliminated prior to the Bogotá meeting (such as the appeal mechanism). Further deletions and amendments were made during the meeting hoping that it would satisfy some of the opponents. Unfortunately this was not the case, despite the fact that the ISO Central Secretariat confirmed that they are in compliance with ISO Directives (as were their ISO WG SR counterparts).

4.2.1. Operating procedure to improve balanced stakeholder participation

The main elements of this procedure were:

- Registration of standardization meeting participants including their affiliation (national standardization body or liaison, stakeholder category, developing or developed country) and provision of participation statistics using the categories above.

- Creation of an "Advisory Group on Balanced Participation" (AGBP) to monitor regional and stakeholder balance in standards-development activities and to help address imbalances.

- Obligation of Working Group Convenors to assess differences along stakeholder or regional lines and to take them into consideration in the consensus building process.

- Consideration of optional measures to improve stakeholder balance.

4.2.2. Operating Procedure on Liaison A and D Organizations

The main elements of this procedure were:

- Rules for the application of and criteria for potential liaison A and D organizations (the latter operating at the Working Group level only).

- Review and assessment of the applications against the criteria.

- Decision-making process on approval of liaisons.

- Review of liaison arrangements and revocation.

- Provisions for full and, if possible, formal backing of the organizations having liaison A status for CD, DIS, FDIS, and any other document subject to an approval procedure.

- Request for an explicit indication of support for the relevant document.

- Provision of a summary table clearly indicating the level of support on each document from each liaison A organization.

- Consideration of the level of support among all liaison A organizations in decision-making.

- (The proposal for an informal appeal mechanism was deleted before the Bogotá meeting.)

These suggested provisions (for further details please see the attached procedures) were quite moderate compared to approved rules for the ISO WG SR, which go so far as to require that only one person by stakeholder category is allowed to join the group and where six stakeholder groups have been created: consumers, government, industry, labour, NGOs, SSRO (Service, Support, Research, and Others).

5. The Bogotá meeting 2008

At the June 2008 meetings it became clear that those who had opposed this process from the very onset were vigorously fighting the committee's adoption of the culmination of ten years of NGO-related discussions and the key output of four years of work of the NGO-CAG TF. The Task Force's efforts to further dilute the draft procedures based on input provided at a mid-week workshop on the procedures did not help. Subsequently, the designated new chair of the TC decided – based on advice from several CAG members – not to submit the papers to a plenary discussion. It is debatable whether this decision was correct in formal terms. In fact, the NGO-CAG TF was charged by the TC to come up with procedural proposals. From that perspective, the TC should have had a chance to debate the outcome of the efforts and the document should have been progressed to a ballot after the meeting. Instead, the chair suggested creating an "NGO Contact Group" advising the chair on NGO matters. However, this alternative has been rejected by the remaining NGOs participating in the committee as an untenable substitute for the proposed operational procedures. Nevertheless, the plenary expressed support for the proposed way forward.

At a higher level, the Bogotá meeting demonstrated tangibly that when it comes to actual standards development, ISO is not fulfilling its strategic policy commitment to ensure broad and meaningful public-interest participation in advancing its goal of developing standards for a sustainable world. Until and unless ISO takes more meaningful steps to implement this commitment, we question whether it is the appropriate forum to develop international standards in support of broader public policies.

We believe the ISO leadership and governance bodies must take action to ensure a genuine balance of stakeholders in the process of standards-development and decision-making. This should be a prerequisite for the development of international standards in support of public policies.

About the organisations

ANEC is the European consumer voice in standardisation, representing and defending consumer interests in the process of standardisation and conformity assessment, as well as in policy and legislation related to standardisation. Our aim is a high level of consumer protection. ANEC was set up in 1995 as an international non-profit association under Belgian law, and represents consumer organisations from the European Union Member States and the European Free Trade Association (EFTA) countries. For more information, please visit www.anec.eu

ECOS, the European Environmental Citizens' Organisation for Standardisation (asbl), represents 21 member organisations (8 European umbrella organisations and 13 national environmental NGOs). ECOS was founded in 2001 as a non-profit association under Belgian law to integrate environmental considerations in standard-setting. Its activities range from measurement standards for pollutants in air, water and soil over nanotechnologies, GMOs to EMS, product standards and energy efficiency in buildings and appliances. Besides it represents environmental NGOs in the implementation process of the EU's Eco-design of Energy using products ("EuP") Directive. For more information, please visit www.ecostandard.org

Pacific Institute for Studies in Development, Environment, and Security, established in 1987, is a non-profit policy research and advocacy center based in Oakland, California. Since its inception, the Institute has aimed to generate fundamental change in how threats to sustainability are perceived and solved. The organisation uses science, economics, and consensus-building to create analytical tools and practical solutions that take issues out of the realm of ideology and into the realm of real world action. Our innovative approaches help to protect and restore the environment, create and enhance economic benefits, and treat all segments of society fairly. These 3Es—environment, economy, and equity—provide guidance and balance to our efforts. For more information, please visit www.pacinst.org.

ANNEX

Preamble to operational procedures to improve stakeholder involvement in ISO TC 207

1. The ISO 14000 series of standards on environmental management developed by ISO/TC 207 is aimed at providing tools in support of sustainable development and has the potential for significant public policy implications. For the credibility and worldwide support it is of great importance that these standards are developed in an open and transparent process that allows for the involvement of a wide range of stakeholders. The ISO Directives provide a sound basis for that process. Both the *ISO Strategic Plan* and the *ISO Code of Ethics* address the importance of making sure that public interest groups are adequately involved in ISO's standardization activities where relevant.

2. In the ISO system and in accordance with the ISO Code of Ethics, the member bodies play a key role in organizing the multi-stakeholder consultation process at the national level as a basis for providing the national input in the ISO 14000 standards development process. Part of this is taking appropriate measures to facilitate the participation of consumers and other affected parties from civil society, SME's and public authorities. The member bodies have the responsibility for nominating experts at the working group level and establishing national delegations to SC and TC meetings taking into account all relevant interests at the national level.

3. In addition to this nationally-based input in the development of the ISO 14000 standards, direct participation of international organizations representing specific stakeholder perspectives contributes to the level of support for these standards.

4. ISO Strategic Plan 2005 – 2010 aims at providing standards for a sustainable world, and one of the key objectives is ensuring the adequate involvement of interested and affected stakeholders in ISO's work and processes.

5. Based on and fully recognizing the above mentioned processes and responsibilities and with a view to advancing the strategic intents of ISO and of the technical committee itself, ISO/TC 207 has developed the following operational procedures to further improve the stakeholder involvement in the development of the ISO 14000 series. These operational procedures in no way restrict the authorities and roles of the TC 207 member bodies but provide additional guidance within the scope of the ISO Directives to assist Working Group Convenors and the technical officers of the Technical Committee to facilitate enhancement of stakeholder involvement. By doing so, ISO/TC 207 also wishes to contribute to the overall aims and policies of ISO in its pursuit of recognition as the leading platform for

the development of globally and market relevant International Standards, and in that way contributing to a more efficient and sustainable world economy.

Operating procedure to improve balanced stakeholder participation

1. The WG Convenors should keep an up-to-date register of all national and liaison experts, including information on their experts' affiliated national member body/liaison organization, stakeholder category, and whether they come from a developing or developed country. A summary of this information shall be made publicly available (i.e. statistics of stakeholder category and affiliation to a developed or developing country) upon request.

2. The TC Chair and WG Convenors should after every meeting prepare an attendance list of all national and liaison experts, including information on their affiliated national member body/liaison organization, stakeholder category, and whether they come from a developing or developed country. A summary of this information shall be made publicly available (i.e. statistics of stakeholder category and affiliation to a developed or developing country) upon request.

3. A small Technical Committee-level Advisory Group on Balanced Participation (AGBP) shall be formed within the TC 207 Chairman's Advisory Group. Consisting of one person per stakeholder category and the Chair of the Developing Countries Contact Group (DCCG), the AGBP will assist the TC Chair and Secretary monitor the extent to which regional and stakeholder balance in standards development activities at the working group level is being achieved. The AGBP may also serve as an informal liaison mechanism between the TC leadership and other members of the Committee's respective stakeholder categories as well as members of the DCCG. Membership of the AGBP will be determined by invitation of the TC Chair.

4. The TC Chair and Secretary shall, in cooperation with the AGBP, review stakeholder and regional balance at regular intervals and decide if and how to address imbalances. Temporary stakeholder and regional imbalances shall not restrict progress in the standards development activities at the working group level, but all reasonable attempts should be made to achieve balance over the long term.

5. A precondition for any balanced decision making in standards development is the identification of the differences of stakeholder and regional perspectives where they exist. Thus as part of their convening function and understanding when consensus has been achieved, WG Convenors should undertake to assess whether particular policy and/or standards content-related issues are the source of differences along stakeholder or regional lines.

6. There are a wide range of approaches through which stakeholder balance can be improved, including:

   a. encourage nomination of experts from the under-represented stakeholder group(s) or regions to join the standards development work at the working levels ;

b. encourage experts from the under-represented stakeholder group(s) or regions to comment on a specific issue;

c. seek input on an issue from the relevant AGBP members;

d. seek advice from other Chairs and Convenors;

e. in deciding on whether an objection is made by an important part of the concerned interests, WG Convenors should consider the balance of developed/developing country and stakeholder representation. Broadly held differences among regions and stakeholders should be given appropriate consideration in the decision making process, rather than simply relying on majority opinions of experts present. The WG Convenor's decision and its context will be recorded.

7. Resources permitting, the TC and WG Secretariats should provide administrative assistance in achieving any of the above.

Operating Procedure on Liaison A and D Organizations

Process for approving liaison organizations

1. Applications for liaison A membership for the whole TC 207 shall be submitted to the TC secretariat or to ISO CS. Applications for liaison A membership for a TC 207 subcommittee shall be submitted to the relevant SC secretariat or to ISO CS. Applications for liaison D membership for a TC or SC Working Group shall be submitted to the secretariat of the parent TC or SC or to ISO CS. The responsible secretariat will immediately notify ISO CS of each liaison application received. ISO CS will inform the responsible secretariat of each liaison application received

2. The application shall include a rationale for the establishment of both category A and D liaisons, and in particular with a detailed description of how the organization meets the acceptance criteria given in clauses 6-10 below and an indication of the stakeholder category the organization represents. In addition, the application should also indicate whether the applicant for liaison membership represents the interests of stakeholders from developed countries, developing countries, or both.

3. Applicants for Category A and D liaison are initially reviewed by ISO CS to determine that the organization qualifies for registration.

Following the ISO review, the chair of TC 207 or the relevant SC shall assess all applications against the relevant criteria in clauses 6-10 below. Deficiencies may be noticed to the applicant and the applicant may amend the application. 4. When making the assessment the TC207 and SC chairs shall consult with the Advisory Group on Balanced Representation (defined in the operating procedure on ensuring balanced participation) and, where appropriate, with the relevant WG convenor.

5. Category A liaisons are established by the ISO Chief Executive Officer in consultation with the secretariat of the technical committee or subcommittee concerned. A ballot shall be conducted among the P-members including a recommendation by the chair for a vote of Approval or Disapproval. ISO CS shall be informed of the ballot results.

All final decisions on approval of applications for liaison D are made by the ISO TMB. A ballot shall be conducted of the P-members including a recommendation by the chair for a vote of Approval or Disapproval. The ballot results will be communicated to the TMB. (Note: This process may be outside of the current Directives; if so, it would need TMB approval.)

Criteria to be considered when reviewing applications for Liaison status

6. Liaison organizations must be legally incorporated.

7. The liaison organization shall be international or broadly based regional organizations working or interested in similar or related fields as the TC, SC or WG with which that liaison is sought.

8. The liaison organization shall have a sufficient degree of representativity within its defined area of competence within a sector or sub sector of the relevant technical or industrial field.

9. The application should state that the expert(s) representing the liaison organization have sufficient degree of authority to speak on behalf of the organization, and there are formal internal consultation processes in place to ensure there is organizational support of the positions taken by the representative(s).

10. In making ballot recommendations on applications for liaison status, the TC or SC chair should seek to ensure that the addition of another liaison organization does not negatively impact the stakeholder and geographic balance of experts and observers in the TC, SCs or WGs.

Information on Liaison Organizations

11. The TC and/or SC secretariat shall make available to their members:

   a. all new applications for liaison membership, including all information submitted in support of the application;

   b. the TC or SC chair recommendation to accept or not the application based on a determination as to whether application criteria have been satisfactorily met;

   c. results of P-member ballots by the TC or relevant SC on each application,

   d. results of TMB decisions on the approval of D-liaison applications, and

e. a regularly updated list of all existing liaison members, including liaison reports and other supporting information grouped by stakeholder category and developed/developing country

Review of liaison membership

12. At least every year, liaison organizations shall submit activity reports to the TC or SC secretariat outlining how they have contributed to the work of TC 207.

13. The TC or SC shall review all liaison arrangements at least every year.

14. If the liaison organization has not contributed consistently to the work of TC 207 or any of its SCs or WGs, the TC or SC chairs, in consultation with the AGBP may, where appropriate, recommend to the TC, SC, or WG that liaison status be revoked. Before making a recommendation, the TC or SC Chairs will contact and seek information from the relevant liaison organization.

B. Full and formal backing of each liaison A organization

15. Technical committees and subcommittees shall seek the full and, if possible, formal backing of the organizations having liaison A status for each document in which the latter is interested including CD, DIS, FDIS and any other document subject of an approval procedure as outlined in clauses 16-19 below.

16. Liaison A organizations will be invited to indicate their full and formal backing through a request for comment including an explicit indication of support for the relevant document issued by the TC or SC secretariat. This comment does not constitute a vote.

17. Liaison A organizations that find the relevant document unacceptable must state the reasons for this in their comments.

18. The TC or SC secretariat agree to provide to their experts a summary table clearly indicating the level of support on each document from each liaison A organization, grouped by stakeholder category.

19. The TC or SC chairs will, in consultation with the relevant Advisory Group on Balanced Participation, consider the level of support among all liaison A organizations when deciding whether to approve the document and how to proceed.

20. Every attempt shall be made to resolve negative comments on draft standards from liaison A organizations like comments from NSBs.