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ISO 26000: Implications for Canadian Manufacturing and Services Sectors

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Introduction

- **Research Commissioned by Industry Canada**
- **Purpose:**
 - **To gain a better understanding of how ISO 26000 is likely to change the landscape and operating conditions for Canadian manufacturing and services sectors**
- **Review of:**
 - **1. Legal Implications**
 - **2. Relationship to Existing Initiatives**
 - **3. Implications for Business Planning and Strategic Management**
- **Does NOT attempt to assess the “economic” implications of ISO 26000**

Scope and Importance of Manufacturing and Services

- **Manufacturing 15-17% of GDP**
 - Automobile, Chemical and Metallurgy-major drivers
- **Services 70% of GDP**
 - legal, accounting, engineering, education, computer and communication systems, management consulting, scientific research, advertising, accommodation and food, recreation, banking, health, safety and energy services

ISO 26000: Coverage and Approach

Guidance Standard

- 1. Provides guidance, no formal obligations**
- 2. Statements are often open-ended suggestions rather than precise actions**

Core Subjects

- 1. Organizational Governance**
- 2. Human Rights**
- 3. Labour Practices**
- 4. The Environment**
- 5. Fair Operating Practices**
- 6. Consumer Issues**
- 7. Community Development**

ISO 26000: Some Exemplary Language

- Fair Practices:
 - To prevent corruption and bribery throughout its sphere of influence an organization should: Identify the risks of corruption and implement, apply and improve policies and practices that counter corruption, facilitation payments, bribery and extortion; Provide leadership commitment and oversight
- Community Development:
 - An organization should: ... participate in local associations as appropriate with the objective of contributing to the public good and the development objectives of communities.

Legal Implications-Related Legislation

- **Canadian Legislation**

- **As a general rule, Canadian legislation covers many, if not most, of the issues identified by ISO 26000—some differences exist however:**
 - Consumer Protection and Labour Rights-very similar coverage
 - Fair Operating Practices and Human Rights-**risk analysis, due diligence**
 - Organizational Governance-**stakeholder engagement**
 - Environment-aim for **sustainable resource use and carbon neutrality**
 - Community Development-**not covered by Canadian law**

Legal Implications-Common/Civil Law

- **Application of Common, Civil and Statutory Law**
 - **Contract Law**
 - **ISO 26000 as an explicit or implicit term of contractual obligations**
 - *Murray v. Sperry Rand Co.* (1979) 23 .R. 456 (H.C.)
 - **Tort Law**
 - **“Standard of care” in negligence; “industry standards” for nuisance**
 - *Visp Construction v. Scepter Manufacturing Co.* (1991) 45 Const. L. Rep. 170 (Ont. Court Gen. Div.).
 - **Statutory Law**
 - **Defence of “due diligence”**
 - *R. v. Domtar* [1993] O.J. No. 3415 (Ont. C.J.—Gen. Div.).

Legal Implications-Soft Policy

- **ISO 9000 and 14000 series experience suggests possibility of reference to ISO standards as a basis for determining access to soft policy benefits**
- **Fiscal policy; border tariffs; procurement policy; investment conditions**
 - public procurement accounts for 15%-50% of GDP in most economies
- **Absence of any means for verifying compliance make it difficult for public policy makers to incorporate ISO 26000 within soft policy instruments**

Legal Implications-Trade Policy

- **ISO 26000 as an illegal trade barrier**
 - **Trade law restricts governmental action, not market-based, voluntary or private sector action**
 - **Relevant WTO Agreements**
 - **General Agreement on Tariffs and Trade**
 - **Agreement on Technical Barriers to Trade**
 - **Agreement on Government Procurement**
 - **ISO 26000's design facilitates maximum interplay between governmental requirements/legislation and ISO 26000 due to:**
 - **Origin neutrality**
 - **Participatory development process (largely compliant with TBT Code of Good Practice)**
 - **Represents an international standard**

Legal Implications-General Observations

- **Similar coverage across legal obligations and ISO 26000 on many core subjects**
- **Legal obligations are supported by a very clear and forceful enforcement mechanism; ISO 26000 is not**
- **Legal obligations tend to protect negative rights rather than positive rights, whereas ISO 26000 speaks to positive obligations as well**
- **Legal obligations typically do not have jurisdiction beyond national borders; (note soft policy exception)**
- **ISO 26000 could expand legal obligations of Canadian companies**
- **ISO 26000 does not, on its own, represent a trade barrier**
- *Ability of the law to make direct reference to, or rely on ISO 26000 to meet its own objectives, is highly limited due to ISO 26000's generality, open-endedness and lack of a compliance infrastructure*

ISO 26000 and Existing Instruments

International

Social

**OECD guidelines for Multinational
Enterprises**

ILO Tripartite Declaration

Global Compact

Global Reporting Initiative

**Voluntary Principles on Security and
Human Rights**

AA1000

SA8000

Sullivan Principles

Finance

IFC Performance Standards

Equator Principles

UNEP Finance Initiative

Other

**Fair Trade Labelling Organizations
International**

Organic Labelling

Rainforest Alliance

Marine Stewardship Council

Utz Certified

Sustainable Forestry Initiative

Forest Stewardship Council

Energy Star

ISO 14000

International Hydropower Association

Sustainability Guidelines

Better Cotton Initiative

Roundtable on Sustainable Palm Oil

Roundtable on Sustainable Biofuels

Canadian

**International Code of Ethics for Canadian
Business**

Ecologo

ISO 26000 and Existing Initiatives

- **Current Trends Across Voluntary Initiatives:**
 - Growing emphasis on independent verification
 - Movement towards greater sectoral specificity
- **ISO 26000 goes the other direction being *more* generic than any other standard and *less verifiable* than most other standards**
- **ISO *does* set the basic principles that feed into majority of the other initiatives**
- **ISO 26000 does not specify how it relates to, or works with, existing initiatives**

Business Perspectives-Expectations

- **ISO 26000 is material to business operations**
 - **Particularly in social and environmental areas**
- **However, little impact expected on existing operations and practices**
 - **Due to overlap with existing Canadian legislation; absence of practice guidance**
- **Could positively impact competitiveness by bringing laggards into adoption of CSR practices**
- **Inability to demonstrate compliance renders it less interesting to business community**

Business Perspectives-What's Missing

- **Areas where more work would be helpful for building business relevance**
 - **Means for determining compliance**
 - **Guidance on how to measure social performance and how to link to strategic planning**
 - **Guidance on how corporate governance links to social performance—including a balancing of shareholder interests with social interests**
 - **More on using ISO 26000 for corporate risk management**
 - **Operational guidance for implementation across the board**
 - *How to move to low-carbon technologies*

Business Perspective-ISO 26000 Assets

- **Participatory governance and development**
- **Comprehensive**
- **Global Application (Inter-jurisdictional)**
- **ISO Branding and Reach**

Observations

- **ISO 26000 represents a unprecedented and uniquely global and participatory process**
- **ISO 26000 carries greater breadth and “brand power” than most CSR approaches currently in operation, but linkages with other initiatives remains unclear**
- **ISO 26000 does go beyond the law and has the potential reinforce and alter its reach, but only if the terms of compliance are more precisely defined**
- **ISO 26000 lacks two key elements for securing broad business interest: 1. practical, operational guidance in implementation and 2. means for ensuring and demonstrating compliance**
- **Short Term Implications for Canadian Business: Minimal**
- **Longer Term Implications: Will depend upon ability and willingness of the international community to build on existing momentum to develop practical tools for implementation and related compliance regime**

Scenarios Moving Forward

- **ISO 26000 becomes an International Guidance Standard:**
 1. but does not get significant uptake by the market OR
 2. gets significant uptake, but without clear management of compliance doesn't improve transparency or performance significantly
 3. gets significant uptake and mobilizes farthest reaches of corporate activity towards increased social responsibility
 4. becomes a benchmark for credible and legitimate business operations across Canada and the world
- *In order to move towards 3 and 4, there will be a definitive need for operational tool development and, quite possibly, a stronger compliance and implementation regime*