September 28, 2009

To: Members of the ANSI IPC Committee

From: Helen Delaney

Re: Responses to Comments on the paper "Liberalizing Regulation, Trade, and Development: Choosing Standards Based on Merit

I am pleased to respond to the comments received and should like to thank those who spent precious time and effort thinking about the contents of this paper. I have organized my responses into two sections: A general response, and individual responses to specific comments. Between the two, I hope to have covered all the points raised.

To the Committee for their time and kind consideration, and to the ANSI staff, I extend my deepest appreciation.

I. General Responses

The Committee wisely requested that two sections be added to this paper: (1) A purpose statement; and (2) A definition of Merit. These are done; and it is hoped that they provide additional focus and intent. For those whose comments were offered before these additions, the purpose of the paper is quite simple and is stated up front:

"The purpose of this paper is to stimulate further interest in standards originating in the United States' system of standardization and to increase awareness of the role they already play in the global marketplace.

Hopefully, it will also afford a greater awareness of the importance of freedom of choice and the ability, indeed, the *obligation* of manufacturers and governments to choose the best standards available, the standards that are most relevant to their needs, the standards that have earned their confidence."

This paper does not introduce a new ANSI policy, nor does it attempt to change an existing one. This paper is about the United States. It is, without being life-size, a national portrait which depicts this country as a citizen of the world, creating and contributing an amazing array of technology to its citizens and to others around the world. The U.S. standardization system is a microcosm of who we are as Americans, what we do as Americans, and how we do it. To the best of my knowledge, every statement presented within it is true.

The U.S. standardization system stems directly from the formation of this country, which was founded amid passionate debate, and dedicated to the individual, to liberty, and to freedom of choice. Ironically, this presents a great challenge to ANSI, for as the U.S. body that holds within it every measure of diversity, it must serve all its members, who can and do disagree with one another as passionately as the members of the First Continental Congress.

While the standards community within ANSI strives to speak with one voice, it also lives with the reality of consensus, a process that rarely results in unanimity. Indeed, this is nowhere better illustrated than in the development of the United States Standards Strategy, an historical consensus hard won amid - indeed in spite of - passionate disagreement. I have tried to align this paper with the principles of the United States Standards Strategy, understanding that it might arouse old, familiar debates and differing points of view.

I have attempted to consider all the points so earnestly offered and will apply them where I can and where it will improve the paper. I cannot, however, change what is, what is American, and the achievements of this great system. To portray it with pride is my only objective.

II. Specific Responses

AAMI: Ms. Theresa C. Zuraski

I thank Ms. Zuraski for the time and effort that went into the AAMI comments. Some of those are addressed in the general comments above. The rest follow.

Response:

Thank you for the technical corrections. This paper has traveled a long road to this point, and undoubtedly, standards designations have been a casualty of time. I shall, of course, try to update standards designations and dates before this paper is published. On the day of publication, however, whenever that is, they will be out of date. This is why I inserted the caveat:

N.B. The standards listed above were current at the writing of this paper. They are intended primarily for purposes of example and some will undoubtedly be updated or superseded at time of publication.

They really must be presented as examples and not as resources for seekers of current technology.

Thank you for noting that AAMI, ISO, and IEC, are not included in the list of abbreviations. I shall certainly add them, and I apologize for the oversight.

On International Standards

It is not the intent of the paper to define what constitutes an international standard, or to name rightful "owners" of this designation. What is presented in the context of international standards are the principles for the development of international standardization as set down by the TBT Committee, ascribed to by the United States Trade Representative, and practiced by U. S. based standards developing organizations. TBT principles for the development of international standards and global standardization by sector-based (meaning U.S.) SDOs are strongly

advocated in the U.S. Standards Strategy. The paper also makes pointed references to the ISO and the IEC and the impressive participation by U.S. based experts and organizations.

There is no doubt that U.S.-developed standards are used internationally in commerce and adopted by foreign governments as the basis for technical regulations. That is the point of Annex I, which is taken from TBT notification documents. As to the comment to delete it, I would have to aver that this is the crux of the evidence of international use of U.S. based standards, and supports statements in the paper, underscoring them as fact instead of conjecture.

Even historically keen critics of the U.S. on this matter, including some within the ISO, now concede that there is such a thing as an international standard that is spelled with a small "i." To satisfy this sensitivity, the word "international" in this context within the paper is never presented with a Capital "I".

What is of primary importance, however, and the point of the paper, is the right that exists within the U.S. system to choose *a process* for the development of international standards that meets the goals and needs of constituents and industries. This is nowhere more apparent than within AAMI, making it a prime example of the freedom within the U.S. system, not only to choose the process, but to choose the designation of its standards. This is all the paper says.

If Ms. Zuraski believes that a clear picture of AAMI and its goals would also give better balance to the paper, I would be more than happy to interview her, as I have representatives of other SDOs, and with her input, describe the AAMI choice for developing and using standards - in particular AAMI's choice to adopt ISO and IEC standards with appropriate deviations.

Society of Cable Telecommunication Engineers: Mr. Stephen Oksala

Thank you to Mr. Oksala for his comments.

On the comment that a theme runs through the paper that competing standards are a good idea:

Response:

Again, I must reiterate that this is not an opinion paper, but one that paints a picture of the American scene. The paper carefully stays away from opinion and focuses on American values, as expressed by American entities. Nowhere in the paper is the idea that standards should compete. What the paper does state is that standards are imbued with values such as effectiveness and relevance. These are not the author's words or ideas, but those of the WTO Committee on Technical Barriers to Trade, which does require international standards with those values to be used in technical regulations. The toolbox concept comes from industry, and choosing the right standard for the right job, according to successful companies, is not only likened to the selection of a tool for a task, but the selection of standards is considered the same as the selection process for any component, sub-contractor, or supplier. This is simply the reality of the marketplace.

Competitiveness and standards are, admittedly, inexorably linked, and the concept is that the better the standard, the better the performance of the product. Still, there is nothing in the paper to encourage *competition among standards*. What one might conclude from those who are competing successfully, however, is that the development of *better* standards *is* a good idea.

This is an excellent place to thank the senior staff members of ANSI for their thorough reviews of this paper. They waded through it more than once, always with eyes wide open. Whenever the author strayed into the never-never land of opinion, the ANSI staff drew her back and scrubbed it clean of such offenses. They were uncompromising, strict, and vigilant. For this I am very grateful.

On the comment that "…this is a different message than the idea that we want one standard, but the source could be from a wider variety of places…:

The paper does describe unique standards as follows:

From time to time, a standard is developed that virtually defines the product, i.e., only one standard or one set of standards exists that provides the characteristics of the product and/or its production or testing methods. Such a standard, by virtue of its matchless technology or universal applicability, may also act as the ideal international standard so often called for by global traders and governments alike: *the one standard that is accepted everywhere.*

The words "matchless or universal applicability" and "ideal" are those of the author. But the paper stays away from phrases such as "what we want". That would make it an opinion paper.

On the comment: "There is also a theme that standards should be judged by their acceptance."

Nowhere in the paper does this statement appear, nor does the concept. The author is painfully aware, however, that there are instances where standards *are* judged on their political acceptability and not on their merits. That was reason enough to write this paper.

On the comment: "…we don't spend nearly enough time to promote process. In the first half of the paper, one could easily infer that ANSI thinks that the only thing that matters is the output."

The section "What is Merit?", which is in the beginning of the paper, contains this phrase:

Assigning worth, or merit, to a standard is precarious at best, for what constitutes merit in the eyes of one may not constitute it in the eyes of another. In the case of merit, one size does not fit all.

That being said, there are general, or horizontal, positive attributes that can be assigned to a standard, whatever its technical objective. The assignment of merit can begin with the process that creates it. Here, there are accepted guidelines, such as the TBT Committee's *Decision On Principles For The Development Of International Standards.*

Page 9: "The United States-based standardization system recognizes the principles outlined in the Decision of the TBT Committee as the ultimate authority on the development of international standards. Furthermore, it recognizes that U.S. based standards developing organizations that apply these principles to their standards setting process are developing standards that are effective, relevant, and contribute to the goal of the Agreement.[1]

In addition, the American National Standards Institute (ANSI) has accepted the Code of Good Practice on behalf of more than 200 standards developing organizations in the United States."

Other references to process are "The Role of U.S. and other Governments in the Standards Development Process", which begins on page 12. "The Sectoral Model" on page 17, "A Heterogeneous Collection" on page 17. ANSI accrediting processes can be found on page 19.

On the comment: "It's easy to see that the author is not familiar with the ICT industry. Not only through examples used, but through the whole chain of thought. There is even a discussion of governments, and ISO and IEC, but ITU isn't even mentioned."

Mr. Oksala makes a good point. In my opinion, the ICT industry is more like a universe than an industry, mindboggling in its complexity, futuristic, fast-moving, regulated in its own way, sharing global uses of networks, services, radio spectra, etc. Computers, software, the Internet, satellites, microelectronics, wireless technologies, all have complex, interesting standards stories and legalistic intrigues. In this universe, the mindset of global cooperation and regulation literally sits above industries that are rooted solidly on the ground and those that can operate relatively independently of one another. Standardization within the ITU is in another heady realm, involving governments, making it another ball game entirely, heavily weighted by politics. So much about this universe is unique. It is a system unto itself, identifiable certainly by country interests and practices, but connected globally in a way like nothing else except, perhaps, the world of aviation. I could envision a paper devoted to ICT alone. Perhaps more than one, more than two. It was just too big to tackle in this paper.

Dimensional Metrology Standards Consortium, Inc: Mr. Bailey Squier: On the comment: I DO get nervous over the word "liberalizing" because I am not sure what it means in this case, but I hope I have made my case clear."

Response:

Thank you Mr. Squier, for your comments. I especially appreciated reading comments in an historical context. The word "liberalize" began to be used in describing a marketplace that would operate free from technical barriers to trade at about the time the GATT and later, the World Trade Organization, entered into global trade agreements and began to administer them. As used here, it does indicate a market free of technical barriers, not a political philosophy.

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[1] See the U.S. Standards Strategy at www.ansi.org

American Society of Safety Engineers: Mr. Tim Fisher

On the comment: "Are we trying to make the case that ANSI Standards should trump other standards at the international level? Would this mean the Institute is pushing for American National Standards over ISO Standards? I have read the NSS (sic) before and admit to still not being clear as to what is being proposed…"

Response:

One of the premises of the paper is that standards can come from many sources and can be developed through any process – and have merit - so long as they do not act as a barrier to trade. If they are to be used as international standards, they are best when they conform to principles set down by the World Trade Organization's Committee on Technical Barriers to Trade. These standards may be ANSI standards, or ISO standards, or the Internet standards. The paper does not set one above the other. As a matter of fact, it suggests the opposite. Merit is the great equalizer, removing all labels and sources of emanation. It refers to content and relevance, and users' values, not designation, name, or institution, although an institution may, through the integrity of its process, work to imbue the standard with merit. But Merit, like Justice, is blind. It is impartial.

What the paper does say is that the United States produces standards of merit, and that these standards are highly prized and are used around the world. The United States, through ANSI, also works within the ISO adding its (U.S. developed) standards of merit to its collection, enriching it as well.

There are papers issued by standards bodies that explain or promote standardization in Europe and Asia, stories of industrialized nations that contribute to the world's collection of standards, standards that are used in the global marketplace. Up to now, there was none from the United States. This is ours. That is all.

On the comment "If this is meant to address ANSI accredited SDOs overall - it really only comes across as an advertisement for the biggest SDOs within ANSI."

Response:

Point well taken. Standards that are used internationally and in great numbers are easy to identify and easily pointed to as great accomplishments of any nation. They dazzle like rock stars. And it is easy to overlook the fact that this system is an ensemble cast, with every member contributing something important to the whole.

To this end, I will be happy to add a section to the paper that describes SDOs that are (1) producers of smaller amounts of standards, and/or (2) domestically oriented. Organizations like

these are no less a part of the U.S. landscape, and taken all together, like small businesses, could be quite impressive. Would you be available for an interview - as a representative of these kinds of SDOs?

On the comment "…are we saying that the United States Government could ignore an approved American National Standard in favor of something from Germany because it might be more convenient?"

Response:

As a matter of fact, if a standard from Germany is also an international standard, United States Government Agencies can choose to use it as the basis for a technical regulation now. Technically, if an appropriate international standard exists – no matter who developed it - the United States Government, as a signatory to the TBT Agreement, is obliged to consider it if it is appropriate and fulfills the objective of the agency. Convenience is not a criterion. But the paper doesn't advocate that. This paper is about the U.S. system and standards that emanate from that system. It is proud of them.

In real life, standards from the U.S. private sector are adopted, referenced, or used by the U.S. Government in astounding numbers. Nations, as a rule, prefer to use standards developed by their own citizens, unless, of course, they are developing nations with virtually no standards-developing capabilities.

On the comment: "The National Technology Transfer and Advancement Act…The public law should also be cited.

Response:

You are correct. I shall do so. I will also take into consideration the comment on OMB Circular A-119.

N.B. Other questions of Mr. Fisher might better be answered by ANSI staff.