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Policy Brief/Discussion Paper

Considering the U.S.-EU TTC Working Group on Technology Standards

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In today's economy, many of the world's most innovative companies are demanding greater market coherence and governments of large leading economies are voicing recognition of the strategic importance of cooperation and collaboration on technical standards. Specifically, in recent months the G7 and G20 cited international standards for information and communication technologies (ICT) and digitalization.¹ The G7 specifically invoked the World Trade Organization's principles for development of international standards.

Not long before these statements, on September 29, the U.S and EU launched a formal Trade and Technology Council (TTC) to "coordinate approaches to key global technology, economic and trade issues"² and seek to deepen transatlantic trade and economic relations based on shared democratic values. Below the political leaders ([3 U.S. Cabinet members](#), [2 Executive Vice Presidents of the EU Commission](#)), the TTC includes the following connected/overlapping themed working groups among a total of ten:

- Working Group 1 – Technology Standards
- Working Group 4 – Information and Communication Technology and Services (ICTS) Security and Competitiveness
- Working Group 5 – Data Governance and Technology Platforms
- Working Group 6 – Misuse of Technology Threatening Security and Human Rights
- Working Group 10 – Global Trade Challenges

According to the EU, all 10 working groups are intended "to operationalize the political decisions [by the principals] into deliverables, coordinate the technical work, and report to the political level."³

Working Group 1, led on the U.S. side by the Commerce Department, is "tasked to develop approaches for coordination and cooperation in critical and emerging technology standards including AI and other emerging technologies". Topic areas under study include Artificial Intelligence⁴ and Additive Manufacturing. The Working Group intends to

- develop coordination mechanisms for information sharing and potential collaborative proactive action in international standards development
- defend common interests in international standards activities for critical and emerging technologies

¹ See Annex 1 for relevant statements.

² U.S.-EU Trade and Technology Council Inaugural Joint Statement, September 29, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/september/us-eu-trade-and-technology-council-inaugural-joint-statement>

³ EU Commission Fact Sheet: https://trade.ec.europa.eu/doclib/docs/2021/june/tradoc_159642.pdf, page 2

⁴ Resources related to the status of U.S. and EU AI regulations and standardization is provided in Annex 2.

- foster broader participation in Standards Development Organizations by civil society organizations and small-and-medium-sized businesses

In so doing, the U.S. and EU

- support the development of technical standards in line with their core values
- recognize the importance of WTO principles for standardization (e.g. openness, transparency, relevance, etc.)

According to Commerce Dept. officials who spoke at a November 18 stakeholder session, the U.S. does not intend to raise for discussion in Working Group 1, at least in the near term (before confidence has been built and “low-hanging fruit” has been harvested), the trade implications of the EU’s legal structure regarding the recognition and use of international standards. Commerce Secretary Gina Raimondo wants actionable items that support competitiveness and innovation and can produce positive results for the U.S. stakeholders in the near term, they said. Evaluation of which technology standards for AI to focus on is being done on a case-by-case basis, they added.

The trade policy and market access implications of standardization appear to fall within the scope of Working Group 10 – chaired by the Office of the U.S. Trade Representative – which is tasked to, in part, “avoid new and unnecessary technical barriers in products and services of emerging technology”. In Annex V of the Joint Statement, the two sides state this objective will be pursued “while ensuring that legitimate regulatory objectives are achieved. This work will fully respect each side’s regulatory autonomy and regulatory system and will promote the highest level of openness and transparency”. This echoes statements in the main body of the Joint Statement.⁵

Discussion Issues

Standards development in both the U.S. and EU is essentially private-sector-driven, although in each area governments are involved in standards activities via various public-private partnerships. In the U.S., by law federal agencies are directed to use private-sector-developed standards when available and effective; federal agencies are encouraged to participate in SDO’s to help shape these standards. In most cases federal agencies do not provide direct funding for standards development, nor do they issue mandates to SDO’s.

European standards organizations have special cooperative arrangements with certain SDO’s and are often requested by the EU to develop “harmonized standards” for legislative purposes. In the ICT area for the purposes of public procurement, EU law permits the Commission to reference standards that are not harmonized or international. However, outside of ICT, EU law rejects direct recognition of many voluntary international technical standards – developed by organizations where participation and voting are not organized by national delegation – as providing a presumption of conformity with its legislation. While the additional legal hurdles put in place by the Commission may help to advance the interests of some European stakeholders, they are slowing down European standardization to the extent that industries have complained to the EU Council about damage to innovation and competitiveness.

A performance-based alternative approach that promotes innovation and competitiveness is used in the U.S. and other countries that permit government regulatory authorities to recognize multiple national,

⁵ Section 1, Paragraph 5.

regional and/or international standards up front as equivalent in providing protection for consumers and as guardrails for industry. This approach benefits all parties: regulators (who have a mandate to choose standards based on fit-for-purpose and technical merit), industry (who save time and money by not having to re-test their product versus multiple standards) and consumers (who have a wider selection of compliant products from which to choose).

Implicit in the TTC are the challenges posed to U.S. and EU shared values and technological leadership by China and, to a lesser extent, Russia. In Europe, these challenges encourage defense and maintenance of separate individual national delegations by EU member states in international standards bodies that follow a national delegation principle, ensuring that, if coordinated, EU members can block adoption of proposals. Some have called for greater strategic coordination of EU member states in international standardization to ensure an effective counterweight to China. While there is the potential for SDOs and consortia in the U.S. to be influenced by China, the democratic values of openness and transparency are already incorporated in the process of developing standards and provide more obstacles to such manipulation.

Recommendations for Consideration

- Developing coordination mechanisms for information sharing and potential collaborative proactive action and defending common interests in international standards activities for critical and emerging technologies

According to U.S. officials, discussions in Working Group 1 are intended to generate a greater sense of cooperation and coordination and encourage early sharing of information to make sure that participants in SDO technical and policy committees can be prepared and engaged where it matters.

Leveraging communications channels provided by existing public-private partnerships and open consultations on each side of as well as across the Atlantic, the governments should establish regular information exchange regarding standardization activities for emerging technologies.

In doing so, the U.S. and EU should recognize and account for the full breadth of international SDO's in which members from U.S. and EU are working on technical standards for AI and other emerging technologies that align with and reflect our shared values. U.S. and EU regulators should look to align regulatory approaches where possible and encourage modalities of collaboration amongst standards developers, including making normative reference to each other's works where possible, to achieve greater market coherence and technical alignment in support of regulations.

- Fostering broader participation in Standards Development Organizations

There is an argument to be made that the best way to incentivize participation in international standardization activities is to demonstrate that sustained strategic engagement can produce results grounded in technical merit that positively influence a new participant's competitive standing in markets of their choosing (i.e. resulting standards better reflect their technology or business objectives). A secondary incentive is that through engagement SME participants would be able help prevent or minimize outcomes that could disadvantage them in the market.

Membership models and procedures vary by SDO. Holding the technical relevance of each SDO to be equal, the more open to new members an organization is, the greater success U.S. and EU governments may have in encouraging broader participation and engagement. When institutional barriers to entry are very low or zero, all stakeholders, from the largest companies to the smallest, can participate on an equal basis in the process. In the case of the U.S., resulting voluntary consensus standards are often referenced into U.S. law and regulations, saving both government's time and taxpayers' money.

Some have suggested that the U.S. government help to fund strategic engagement in the development of international standards. In some instances, this could be useful to assist SMEs or other interests who possess technical competence but are under-represented in the process. However, there are costs and risks to this approach. Lowering participation costs and making greater use of virtual meeting and collaboration technology could be a more effective approach for all SDOs in the future.

Annex 1 – G7 and G20 References to International Standards in 2021

Excerpt from [G7 Trade Ministers' Digital Trade Principles](#), released October 22:

- International standards for information and communication technologies should be developed in a way that complies with the six principles of the WTO Technical Barriers to Trade Committee, namely transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and the development dimension. Such standards must continue to play an important role in supporting an open, free, and fair environment in the digital age.

Excerpt from [G20 Leaders Declaration, Rome](#), released October 31:

46. Digital economy, higher education and research. We recognize the role of technology and innovation as key enablers for the global recovery and sustainable development. We recognize the importance of policies to create an enabling, inclusive, open, fair and non-discriminatory digital economy that fosters the application of new technologies, allows businesses and entrepreneurs to thrive, and protects and empowers consumers, while addressing the challenges related to privacy, data protection, intellectual property rights, and security. Mindful of the need to support a better inclusion of MSMEs in the digital economy, we commit to reinforce our actions and international cooperation towards the digital transformation of production, processes, services and business models, also through the use of consensus-based international standards and the improvement of consumer protection, digital skills and literacy. We welcome the results of the G20 Innovation League, as a platform through which multilateral endeavors can boost partnerships, collaboration, co-creation, and private investments in technologies and applications benefitting humankind, highlighting how trade and digital policies can help strengthen the competitiveness of MSMEs in global markets and address the particular challenges they face.

Annex 2 – Fragments Re AI Policy Development in the U.S. and EU

The National Institute of Standards and Technology (NIST), an arm of the Commerce Department, is developing an AI Risk Management Framework intended to “help developers, users and evaluators of AI systems better manage AI risks”. The Framework builds on recommendations from a National Security Commission on Artificial Intelligence and a 2019 *Plan for Federal Engagement in Developing AI Technical Standards and Related Tools*.⁶ The *Plan* includes a list of organizations developing AI standards, including ISO/IEC JTC 1, ISO, IEEE, ASTM International, the Consumer Technology Association, ITU-T, SAE International, the Object Management Group, and W3C. Earlier this month the U.S. Department of Defense released “Responsible AI Guidelines” to be followed in development of AI systems⁷ and the Department of Homeland Security announced a survey to collect information from the public regarding their perceptions of AI applications to inform responsive design and deployment.

In April, the EU Commission published a Communication on Fostering a European Approach to Artificial Intelligence, a Coordinated Plan with Member States, and a proposal for an AI Regulation – Artificial Intelligence Act – with harmonized rules for the EU.⁸ The legislative proposal “defines common mandatory requirements applicable to the design and development of certain AI systems before they are placed on the market that will be further operationalized through harmonized technical standards” and cites “compliance with harmonized standards as defined” in Regulation 1025/2012 “should be a means for providers to demonstrate conformity with the requirements of this Regulation.”⁹ ¹⁰The minimum requirements are cited as “already state of the art”, derived from ethics guidelines developed by 350 organizations under the Commission’s High-Level Expert Group on AI¹¹. The legislative proposal also states that “standards for high-risk AI systems “should be non-discriminatory and in line with the Union’s international trade commitments.”

⁶ “Global cooperation and coordination on AI standards will be critical for having a consistent set of “rules of the road” to enable market competition, preclude barriers to trade, and allow innovation to flourish. The U.S. government should ensure cooperation and coordination across Federal agencies and partner with private sector stakeholders to continue to shape international dialogues in regards to AI standards development.” pp. 7-8.

https://www.nist.gov/system/files/documents/2019/08/10/ai_standards_fedengagement_plan_9aug2019.pdf “

⁷ <https://www.diu.mil/responsible-ai-guidelines>

⁸ <https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence>

⁹ *Ibid.*, pg. 6., pg. 33

¹⁰ In EU Regulation 1025/2012, a harmonized standard is defined as “a European standard adopted on the basis of a request made by the Commission for the application of Union harmonized legislation.”

¹¹ https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419