U.S. Chamber of Commerce

U.S. Chamber of Commerce Comments to NIST on the PRC's Policies and Influence in the Development of International Standards for Emerging Technologies

Executive Summary

The Chamber works to advance standards policy that supports open and competitive markets where U.S. companies can compete fairly and win. We believe global standards development led by the private sector is the best way to promote common, technically sound approaches that deliver on technology solutions and U.S. policy objectives. Such standards should be voluntary, open, transparent, globally recognized, consensus-based, and technology-neutral. The U.S. government has long been the global champion for this approach to international standardization, and it should continue its strong support for U.S. public and private-sector participation in international standards development organizations (SDOs).

In contrast, state-directed and country-specific standards or approaches—including those embraced by the People's Republic of China (PRC)[1]—are disruptive to the inherently global nature of many new emerging digital technologies, as they create separately controlled spheres of influence that slow down market growth and impede cooperative efforts to improve global infrastructure, products, and services. As China continues to shift toward a more nuanced approach to standards[2] that prioritizes the development of intellectual property and emphasizes qualitative innovation over mere quantitative output, it is critical that the U.S. government continue to support standards development that is rules-based, transparent, and technology-neutral – an approach that builds upon the international standards principles established by the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement by promoting the alignment of standards across borders, facilitating trade in connected products, and stimulating innovation in industry. Ultimately, embracing this approach will be the best way to protect against anti-competitive, anti-democratic interference from governments in standards-setting bodies over the long term.

Recommended Priorities for the U.S. Government

As the National Institute of Standards and Technology (NIST) seeks to understand and mitigate the PRC's state-directed interference in international SDOs that focus on emerging technologies, we recommend that it concentrate its efforts on the following imperatives:

---

[1] U.S.-China Economic and Security Review Commission, "2020 Report to Congress of the U.S.-China Economic and Security Review Commission," December 2020, 108-110, https://www.uscc.gov/sites/default/files/2020-12/2020_Annual_Report_to_Congress.pdf.

[2] See details of China's State Council guidance on strengthening technical standards and IPR, issued September 22, 2021: https://www.cnipa.gov.cn/art/2021/9/22/art_53_170293.html.

1. **Ensuring due process, robust intellectual property (IP) protections, and transparency** in standardization bodies;

2. **Enhancing efforts to establish dedicated dialogues** with private stakeholders to address concerns regarding state-directed interference in SDOs;

3. **Bolstering the participation and capacity of U.S. industry** in critical standards-setting bodies and processes;

4. **Incorporating private-sector feedback into diplomatic engagement** on standards-related issues and **launching a standards coordination mechanism** with a small group of like-minded allies;

5. **Preserving the multi-stakeholder approach to internet policy**; and

6. **Clarifying the exemption of standards activities from export control rules** related to the Bureau of Industry and Security (BIS) Entity List.

Recommended Priorities for the U.S. Government

1. **Ensure due process, robust intellectual property (IP) protections, and transparency** in standardization bodies.

Ultimately, the best way to protect the integrity and neutrality of standardization processes is to bolster support for organizations that uphold fair and anonymous voting protocols, enhanced IP protections for knowledge and materials shared over the course of standards-setting processes, and transparency in regard to which participants are involved in standards-setting organizations. This will allow the U.S. government to ensure that standards continue to be established on a fair and level playing field and in a technology-neutral manner over the long term.

2. **Enhance efforts to convene dedicated dialogues with private stakeholders to address concerns regarding state-directed interference in SDOs.**

As the U.S. government evaluates the extent of PRC state-directed influence in SDOs and the effect it has on standardization, it will be critical to have regularized, dedicated dialogues with private-sector stakeholders, many of which work closely with counterparts from Chinese companies in standards-setting bodies. Indeed, when evaluating China's influence over standardization processes, quantitative indicators—such as the number of standards submitted by PRC companies—are not always indicative of success. Private-sector participants in SDOs have a direct understanding of governance processes, the quality of Chinese contributions, and other factors that determine the extent to which the Chinese state is able to assert influence over standardization. Close and regular dialogue with such stakeholders will be necessary as the U.S. government seeks to formulate an effective, nuanced approach to addressing state-directed interference in standardization processes.

3. **Bolster the participation and capacity of U.S. industry in critical standards-setting bodies and processes.**

We encourage the U.S. government to introduce incentives that strengthen the participation of U.S. industry stakeholders in key standards-setting bodies. These incentives should be grounded in a private-sector-led standards policy designed to support competitive markets. Government can also strengthen public awareness of the importance of standards by establishing initiatives to educate students, professionals, and communities about the value of standards to U.S. economic competitiveness and quality of life. Finally, we recommend that government recognize the role of key industry

consortia in promoting global private-sector leadership on technical standards, and deepen dialogue with such organizations to gain a better understanding of how various standards-setting bodies operate, as well as the role they play in the global innovation ecosystem.

4. **Incorporate private-sector feedback into diplomatic engagement on standards-related issues and launch a standards coordination mechanism with a small group of like-minded allies.**

As the U.S. government seeks to understand the nuances of global standardization bodies and identify areas where standardization processes are vulnerable to state-directed interference, working with like-minded partners and allies will be essential to effectively addressing key issues. In this regard, we recommend that the Biden Administration do more to incorporate private-sector feedback into its diplomatic engagement, as most companies involved in standards-setting activities carry out R&D and business operations at a global scale.

We also encourage the Biden Administration to launch a standards consultation mechanism with like-minded partners to shape priorities, monitor work, exchange information, and coordinate on the formulation and implementation of key technology standards. The objectives of this consultation mechanism would include:

i. countering efforts by some governments to dominate international standards-setting bodies;
ii. encouraging U.S. participation and leadership in standards-setting and multilateral stakeholder decision-making bodies; and
iii. encouraging the adoption of standards developed by the United States and like-minded countries, including Canada, Japan, Germany, the UK, and Australia.

Separate from the abovementioned plurilateral standards consultation mechanism, the Administration should also consider the Solarium Commission's recommendation to establish a bureau in the Department of State focused on engagement at the multilateral level, including with the UN Group of Government Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, the Open-Ended Working Group, and the Organization for Security and Co-operation in Europe.

Should China's actions in standards-setting bodies amount to exclusionary practices, the United States should consider adopting trade sanctions coordinated with like-minded partners and allies or WTO actions to seek corrective action.

5. Preserve the multi-stakeholder approach to internet policy.

We strongly encourage the U.S. government to preserve and promote a multi-stakeholder approach to internet policy. Our experience is that consensus-oriented, technology-neutral, and industry-supported policies—paired with a clear and coordinated interagency policy development process—offer the best, most scalable approach to counteract global internet governance challenges. The multi-stakeholder model enables the full participation of a broad array of interested parties, including technical experts, industry stakeholders, civil society, and governments. Over the past few decades, the multi-stakeholder model has driven the rapid innovation of technologies such as the internet, leading to vast economic and societal benefits. Preserving and strengthening the fully integrated adoption of this model by SDOs would further incentivize U.S. industry participation.

6. Clarify the exemption of standards activities from export control rules related to the Bureau of Industry and Security (BIS) Entity List.

U.S. leadership in standards development cannot be achieved if U.S. companies are constrained in their ability to lead and participate in standards development activities. Unfortunately, U.S. industry continues to suffer from constraints stemming from the May 2019 update to the BIS Entity List and the subsequent interim final rule (IFR) related to SDOs in which Huawei participates. The IFR establishes an exemption for standards activity for Huawei, but does not provide an exemption for engagement in standards work for other organizations also identified on the list. The IFR has also created confusion about precisely which organizations are recognized as SDOs under the rule. The combination of these factors has created significant compliance uncertainty for U.S. companies participating in standards development processes.

The U.S. government should move with urgency to resolve these issues by crafting an exemption from the Export Administration Regulations (EARs) for standards development activities (rather than for SDOs) that would apply to all entities on the Entity List. This would enable continued U.S. private-sector participation in and leadership of key standards-setting organizations, which will be of critical importance to efforts to identify and counteract any PRC state-led interference that may be occurring.

Appendices

A. Understanding Channels of Influence over the Development of Standards

While membership and processes vary across standards organizations, there are ways that a stakeholder can typically influence the content of a standard. Below we summarize these as direct and indirect ways of influencing standards development.

Direct (roughly in order of increasing influence)	**Indirect** (roughly in order of increasing influence)
1. Vote – The influence of an organization's vote varies by a committee's rules on what constitutes a member. It can by individual expert, organization, and/or country. 2. Consistently attend and participate in the standards committee meetings. (This also supports indirect influence "C.") 3. Send in written contributions/comments that are accepted as proposed or in principle. For certain technologies, a standards essential patent is another indicator of influence. 4. Propose a standards project that gets approved and ultimately published. 5. Contribute early in the project's development cycle, where such participation shapes the proposal's scope or general direction of the project.	A. Ask other members to support the same voting or substantive position through their written comments. B. Ask the leading experts/voices in a standards committee to support your position in meetings. C. Be a leading expert/'trusted voice' in a standards committee to influence meeting participants. D. Serve as a chair of a committee or as a lead editor.

The column of direct ways to influence a standard can generally be observed by standards committee managers (and members). However, three of the four indirect ways listed are difficult to measure since the information for A and B will only be known to limited parties, and the determination of C is subjective.

With respect to Item D in the Indirect column, while the roles of chairs and lead editors can vary, they generally cannot directly influence the content of standards. Rather, these positions are used to manage and lead members to arrive at consensus-based decisions. Note that committee managers and secretariats are not included in either list.

B. Importance of Bolstering U.S. and Allied Industry Leadership

China's desire to dominate next-generation and emerging technologies by boosting its active participation in international SDOs working on critical technologies has been widely observed.[3] China's efforts to strengthen its role in international standards-setting processes began accelerating in 2015 with its Standardization Reform Plan and Five-Year Plan for Standardization (2016-2020). In October 2021, China signaled its intention to double down on the approach outlined in those plans, releasing a new national strategy for technical standards that includes a focus on advancing efforts to lead standards development in international SDOs and through other channels, such as standards-related dialogues under the Belt and Road Initiative (BRI). Notably, China's new national strategy also appears to signal a willingness to allow the private sector to play a more prominent role in standards-setting processes, calling for greater market orientation and a focus on quality rather than merely quantity of standards outputs.

In response to China's growing influence, we encourage the U.S. government and allied governments to focus their efforts on increasing support for companies to participate in global standards-setting bodies, as well as deepening engagement with SDO participants to fully understand exactly where distortionary practices are occurring. Promoting private-industry leadership while championing SDOs whose governance is rules-based, transparent, and robust is the best way to ensure that no public or private-sector stakeholders can assert undue influence over the standardization of key technologies.

[3] See: Emily de La Bruyere and Nathan Picarsic, "China's next plan to dominate international tech standards," TechCrunch, April 2020, https://techcrunch.com/2020/04/11/chinas-next-plan-to-dominate-international-tech-standards.

C. Standardization and the Role of the ITU

The Chamber is concerned by the ITU Telecommunication Standardization Sector's (ITU-T) increasing emphasis on regulatory standards for the digital economy. Intergovernmental organizations, such as the ITU, are not the proper forum for advancing technical standards for emerging technologies, the development of which is frequently guided by other industry- or sector-based standards organizations that develop and publish industry-specific standards. It is critical to recognize the role of industry consortia and other SDOs in the promotion of private-sector leadership on technical standards. Private-sector leadership ensures that technical standardization issues are rooted in globalized, industry-driven standards and practices.

The Chamber is concerned by recent behavior adopted by some Member States—notably authoritarian states, such as China—which have increased their interest and activism in ITU-T to bring emerging technologies, such as AI and internet governance, under the organization's purview. This trend threatens to lead to the development of prescriptive standards and regulations that could inhibit global innovation and fair competition, as well as undermine democratic values and norms. More specifically, the outsize, politically directed influence of such states in standards-setting within the ITU could lead to further balkanization of the internet, and could perhaps result in the premature regulation or standardization of emerging technologies, including but not limited to the internet of things (IoT), artificial intelligence (AI), cybersecurity, and fifth-generation (5G) wireless technology.

The Chamber encourages the U.S. government to strategically engage the ITU-T with the aim of limiting its expansion into workstreams related to internet policy, which lie beyond its core competencies.