TO THE NATIONAL INSTITUTE OF STANDARDS & TECHNOLOGY
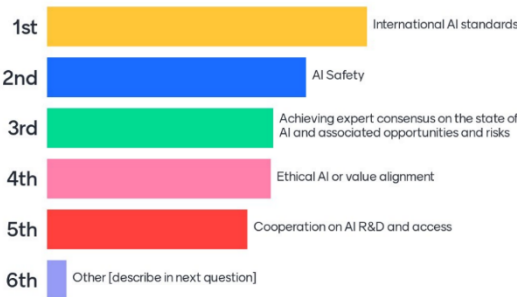**DEPARTMENT OF COMMERCE**

NIST-2023-0309

COMMENTS OF CAMERON F. KERRY
ON IMPLEMENTATION OF EXECUTIVE ORDER 14,110

I am submitting these comments response to the Request for Information Related to NIST's Assignments Under Sections 4.1, 4.5 and 11 of the Executive Order Concerning Artificial Intelligence (Sections 4.1, 4.5, and 11)("the RFI"). I address the questions in the RFI relating to international engagement on standards development and NIST's mandate to lead "a coordinated effort with key international partners and with standards development organizations" on AI standards.

My comments are based on my work at The Brookings Institution, where I am the Ann R. & Andrew H. Tisch Distinguished Visiting Fellow in Governance Studies, and co-lead the Forum for Cooperation on AI ("FCAI"). FCAI is a joint project with the Centre for European Policy studies in which officials from NIST and other U.S. Government agencies have participated and in which standards have been a key subject. A FCAI roundtable on October 17, 2023, explored the growing array of policy proposals and multilateral initiatives around global governance of AI, including the "Hiroshima process" underway in the G7 to develop codes of conduct, the Global Partnership on AI made up of 29 member states, and the effort toward a United Nations Global Digital Compact and a global governance body. We polled roundtable participants on where they think global efforts are best directed, including standards development among the options. As shown in the table below, standards came out well on top.

Table 1

Please rank the areas where international cooperation is needed:

- 1st — International AI standards
- 2nd — AI Safety
- 3rd — Achieving expert consensus on the state of AI and associated opportunities and risks
- 4th — Ethical AI or value alignment
- 5th — Cooperation on AI R&D and access
- 6th — Other [describe in next question]

More than 40 percent of participants in the roundtable listed international AI standards as the first priority, underscoring the importance both of standards and of engagement with allies, trading partners, and likeminded countries to strengthen a broad commitment to international standards that are technically sound and adopted through consultative and consensus-based processes. As European Union Vice-President Margarethe Vestager and I both expressed at the December 5, 2022 Trade & Technology Council ("TTC") stakeholder roundtable, standards can provide a valuable bridge of interoperability across differing systems of law and governance.

While my comments reflect this work, they are not made on behalf of the Brookings Institution or a project of FCAI. They are my own.

The TTC is a critical path for continued international engagement as well as a template for broader engagement. The TTC working group on AI and standards has produced perhaps the most concrete results in that forum, including in the outcomes of the TTC meeting this past week. The EU is an essential interlocutor on international standards because of its active involvement on international standards development organizations ("SDOs"), the size of its economy, and the ambitions of its 2022 standardization strategy. A commitment to international standards and the processes of international SDOs has been integral to the EU's commitment to a rules-based international order. The U.S. Government should encourage the EU to use restraint in the exercise of its authority under it Artificial Intelligence Act and recitals in that legislation that counsel the Commission to strengthen global cooperation, draw on international standards, and make European "common specifications" rare exceptions.

NIST's international engagement should begin with continuing to deepen the work being done in the TTC, particularly on risk assessment. In turn, it should broaden these lines of work to other partners in the G7, which has identified standards as an area for cooperation in the AI space. The Global Partnership on AI can contribute. Terminology and risk assessment have been the most advanced and should continue; other areas are:

- Auditing and testing. Many proposals for AI regulation or accountability call for audits, but these methods are undeveloped. Joint research and convening can hasten standards development in this critical area.
- Consistent incident reporting will contribute to better understanding of AI and its risks. The OECD has created a registry, but it relies on publicly available information. What's needed are best practices for public disclosure.
- NIST is doing work on measuring, red-teaming, and standard datasets for testing (building on its work with facial recognition. Working in parallel with international partners can increase the effectiveness of this essential work. The TTC and other forums should identity projects in these areas.
- The U.S., EU, and G7 partners share a commitment both to broadening participation in standards development and to involvement of the Global South in AI policy and development. Work on standards with international partners should include exploring ways to increase knowledge on standards development and to create channels for voices not generally heard in SDOs, like those of the Global South, civil society, and SMEs. The U.S., international

partners, and SDOs could jointly explore testing how to do in specific standards processes.

- Discussions should define measures of success. Head counts of positions in SDOS may be one minor measure but, if the success of standards lies in quality and uptake, then the focus should be on published standards, particularly those that can be adopted in multiple jurisdictions.
- In this regard, ISO/IEC should be a key focus because of its advantage in international recognition as a result of its status under the WTO and preferred position in the EU framework because of the preference for international standards under the EU AI Act and Frankfurt and Vienna agreements with CEN and CENELEC. ISO also presents advantages of scale and diversity. Notably, the 59 countries represented in ISO/IEC JTC 1/SC 42 represents a larger number than the members states of the EU or EEA, the OECD, or GPAI. ISO/IEC also have been early movers in AI standards; they have adopted 17 AI standards to date with another 27 under development. Reliance on ISO/ IEC should not be the exclusive focus, however. Among others, the IEEE Standards Association and consortia like the Frontier Model Forum can make valuable contributions to standards and practices for responsible AI.

In conducting these activities NIST and the U.S. need to model stakeholder involvement by engaging broadly and continuously and providing ongoing transparency on its discussions with international partners. The overriding objective of international efforts must be to reinforce the use of international standards based on consensus developed through open, participatory procedures and based on sound research input, and the way engagement is conducted should reflect that.

It will be vital for Congress to authorize and appropriate funds for NIST to provide global standards leadership, adopting the administration's 2024 budget proposal and making good on the CHIPS & Science Act provision expressing Congress's sense that "strengthening the unique United States public- private partnership approach to standards development is critical to United States economic competitiveness" and "effective Federal engagement in the development and use of international technical standards."[127] This provision directs NIST, the National Science Foundation, and other agencies to establish a "capacity building pilot program" to provide grants for the costs of participating in international standards development.

NIST's assignments in Executive Order 14,110 are valuable for the nation's development of AI and international leadership. Thank you for this opportunity to comment.

Respectfully submitted,

Cameron F. Kerry