GLOBAL BUSINESS ALLIANCE
Investing in America

April 22, 2020

For Electronic Submission

The Honorable Rich Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Request for Comments on Future Extensions of Temporary General License (TGL) (BIS 2020-000)

Dear Assistant Secretary Ashooh:

The Global Business Alliance (GBA), formerly the Organization for International Investment (OFII), appreciates the opportunity to provide the following comments in response to the request for comments on Future Extensions of Temporary General License (TGL).

GBA exclusively represents the U.S. subsidiaries of many of the world's leading international companies. International companies are invested in just about every industry and in every state across the United States, but they are especially concentrated in the manufacturing sector – responsible for employing 20 percent of America's manufacturing workforce. Moreover, international companies reinvest $100 billion annually back in their U.S. operations which adds to their ongoing presence and commitment to our economy.

Along with creating millions of high-paying U.S. jobs, these international companies operating in the United States produce over a quarter of U.S. goods exports, sending American-made goods to customers around the world. In short, international companies help broaden America's economy and open new markets.

GBA's mission is to ensure that policymakers at the federal, state, and local level understand the critical role that foreign direct investment (FDI) plays in America's economy. GBA advocates for fair, non-discriminatory treatment of foreign-based companies and promotes policies that will encourage them to establish and expand U.S. operations, which in turn increases American employment and U.S. economic growth.

We appreciate the work that the U.S. Department of Commerce does to help grow our economy and attract international investment. We are pleased to have the opportunity to comment on the Future Extensions of Temporary General License and believe that these recommendations will add stability to the business environment in the United States.

Provide greater certainty on the duration of authorised transactions

As a general observation, repeated short-term extensions of the TGL have a negative impact on long term planning, create uncertainty and introduce additional costs for impacted businesses throughout the supply chain. If BIS is content with the scope of the authorised transactions within the current TGL (and taking into account the time elapsed since the TGL was introduced in May 2019) it would be preferable if the TGL was made permanent. However, we also note BIS's stated objectives that the TGL is intended to allow time for companies and persons to shift to alternative sources of equipment, software and technology. If the concept of making the current TGL permanent is not consistent with policy objectives, we suggest that specific non-controversial provisions could be made permanent. Within this we would include the provisions that allow the continued operation and support of existing networks and equipment and provisions aimed at preventing security incidents. Such provisions do not impact long term policy objectives but will support the continued operation of existing infrastructure which is crucial to maintain effectively functioning end-to-end communications networks.

Explicitly permit urgent and necessary business continuity activities

We believe the scope of authorised transactions should explicitly permit measures taken in support of crisis management and necessary business continuity activities. By its very nature, planning for the unexpected is very difficult to define, however we suggest it is possible to limit this to urgent business continuity activities such as imminent network failure, network degradation, or contingency measures required in respect of events such as the Covid-19 pandemic. We would also be supportive of a requirement to report any use of the TGL for this purpose, giving BIS an effective control should it consider it capable of being misapplied. On this basis express provision could be made to broaden the definition of authorised transactions to include urgent business continuity activities (such as troubleshooting, remote diagnostics, patching and vulnerability management) which are necessary to maintain and support the integrity and continued operation of existing networks and equipment.

Transparency of Licensing criteria

We would welcome additional transparency regarding the BIS criteria for individual licence approval or denial. It would also assist commercial planning if a definitive time limit for licence applications to be determined were published. This would mitigate any uncertainty caused by pending applications and support the transparency of supply chains and help underpin strategic risk mitigation of critical infrastructure.

Thank you for your consideration of our comments. GBA appreciates the work of the U.S. Department of Commerce and applauds your understanding of the value of foreign direct investment to our economy.

Sincerely,

Nancy McLernon
President & CEO
Global Business Alliance