CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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March 25, 2020

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

Thank you for your March 23 letter inquiring about the U.S. Chamber of Commerce's position regarding use of the Defense Production Act ("the Act") during the coronavirus pandemic. The Chamber is doing everything in its power to mobilize, together with our members, the most expeditious and robust response to the present national emergency. We believe the Act offers tools that can be useful to address specific industrial bottlenecks and other problems such as price gouging, but it is no panacea. Above all, it is no substitute for a close public-private partnership focused on dramatically boosting production of medical goods and ensuring their swift and efficient delivery to where they are most needed.

It is readily apparent that American companies will do whatever it takes to support America's response to the pandemic and shore up the economy. Companies that have the necessary expertise and infrastructure are working closely with all levels of government to get their products to those who need them most. A wide range of manufacturers have seized this task with both hands and suggested that their equipment can be reconfigured to produce medical equipment, though this may not be accomplished quickly or easily. The principal challenge for many industries is that sophisticated products cannot easily be made without the right highly-specialized equipment, which may not be readily available.

The Defense Production Act was enacted 70 years ago with a view toward defense industry products with a single supplier that usually relied on a purely domestic production chains. As such, the Act was not written with a primary focus on the medical equipment and pharmaceutical industries, which tend to rely on global production chains.

The Chamber agrees there may be some specific situations where using the Act makes sense. The Act allows the President to designate materials to be prohibited from hoarding or price-gouging. These provisions have already been invoked, for instance, to address online sales of masks and ventilators; fraud has also been evident in some of these instances. We applaud these efforts.

Further, use of the Act may make more sense for some industries than others. Manufacturers of personal protective equipment such as masks and respirators may be able to further expand production — beyond the dramatic expansion they have already achieved — if

they are permitted to enter into voluntary agreements with other firms through a DPA-invoked limited antitrust exemption as laid out in the statute.

In the end, the Act isn't a magic wand to immediately solve medical supply shortages. It can't produce highly specialized manufacturing equipment overnight. It can't convert a textile mill into a facility to manufacture N95 masks. It is no substitute for the kind of close industry coordination with government — at the federal, state, and local levels — that can direct critically-needed medical products to where they are needed most.

Thank you for your letter. We are all in this together.

Sincerely,

Neil L. Bradley

cc: The Honorable Ed Markey, Brian Schatz, Chris Murphy, Tammy Baldwin, and Sheldon Whitehouse