

June 17, 2019

Joseph Barloon
General Counsel
Office of the United States Trade Representative
600 17th St. NW
Washington, DC 20508

**Re: Comments Regarding Proposed Modification of Action Pursuant to Section 301,
Docket No. USTR-2019-0004**

Dear Mr. Barloon:

ZeniMax Media Inc., a developer of video games based in Rockville, Maryland, appreciates this opportunity to express our concern regarding the Administration's proposed increase of duties on video game consoles and controllers from China.¹ As a developer and publisher of video game content, we rely heavily on the sale of consoles and accessories needed to play our games. Imposing additional tariffs on these products would cause serious harm to ZeniMax, our consumers, the thousands of other video game developers and publishers in the United States, and U.S. innovation more broadly.² As described more fully below, a vibrant video game console market is critical to our ability to provide good jobs and continue to grow. We therefore respectfully request that the Office of the U.S. Trade Representative remove from the final tariff list the following Harmonized Tariff Schedule of the United States ("HTS") headings: 9504.50.00 (video game consoles), 8526.92.10 (radio remote controls for video game consoles), and 8543.70.87 (video game console controllers using infrared transmissions).

ZeniMax and its subsidiaries create and publish original interactive entertainment content for consoles and other gaming devices. Beginning in 1986 with a small team at our Bethesda Games Studios, ZeniMax has grown to employ over 1500 world-class game developers, graphic artists and designers, sound engineers, producers, programmers, and support staff in the U.S. alone. These are high-skilled and well-paying jobs focused on creating premium video game titles for a growing worldwide market. Our team has developed such award-winning franchises as *The Elder Scrolls®*, *Fallout®*, *Wolfenstein®*, and *QUAKE®*, among many others.

Since our inception, we have grown by investing heavily in research and development to innovate new game engines and features for the video game industry. For instance, our Bethesda Games Studios pioneered physics-based sports games with *Gridiron*. Our id Software studios

¹ Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 22564 (May 17, 2019).

² Entertainment Software Association, 2018 Essential Facts about the Computer and Video Game Industry, at 14, available at https://www.theesa.com/wp-content/uploads/2019/03/ESA_EssentialFacts_2018.pdf (noting that in 2018, there were 2,711 video game companies located in 84% of the congressional districts in America).

developed the first three-dimensional video game engine – known as id Tech® – which spawned the immensely popular first-person genre. And our breakthrough research and development in virtual reality (“VR”) showed the world that commercial VR was possible and catalyzed the explosion of interest in VR platforms. Today, we continue to devote resources to the development of new technologies.

As a developer and publisher of interactive entertainment software products, we rely on the widespread adoption and availability of the consoles and controllers necessary to play our games. We estimate that console players account for approximately 60% of our total player base worldwide.

As the vast majority of video game consoles sold in the United States come from China, the proposed additional tariff of up to 25% would make these foundational gaming products significantly more expensive. Consoles are often sold at a loss to retailers or at razor-thin retail margins to encourage customers to adopt the latest platforms. Given such margins, we expect retailers would be unable to absorb any portion of a significant tariff and would need to pass tariff costs down to consumers. When combined with the increased costs associated with prior rounds of tariffs on the graphics processing units that power consoles, the impact on consumers and the broader video game ecosystem of a 25% tariff on consoles and controllers is likely to be substantial.³

The video game development pipeline is heavily influenced by consumer preferences. According to the Entertainment Software Association (ESA), 63% of Americans surveyed considered the quality of graphics to be important when deciding whether to purchase a game.⁴ Sophisticated, life-like games like ours are made possible by advanced software and can often only be played on the latest consoles. Thus, fewer next-generation consoles in the hands of consumers will lead to a decline in the number of new games consumers purchase. This could cause serious harm to the thousands of game developers and publishers in the United States who depend on console sales to support game sales.⁵ For ZeniMax in particular, this would be especially harmful given that a majority of our global sales come from our console game sales here in the United States.

In addition, any reduction in consumer demand for new games in the United States would force us to reduce the number of new projects that we adopt and therefore the number of

³ See, e.g., Kevin Curran, *Nvidia Slips as Semiconductor Sector Is Stung by Trump's Tariff Tweets*, May 6, 2019, <https://realmoney.thestreet.com/investing/stocks/nvidia-slips-as-semiconductor-sector-is-stung-by-trump-s-tariff-tweets-14949171>.

⁴ Entertainment Software Association, 2019 Essential Facts about the Computer and Video Game Industry, at 21, available at https://www.theesa.com/wp-content/uploads/2019/05/ESA_Essential_facts_2019_final.pdf.

⁵ Entertainment Software Association, 2018 Essential Facts about the Computer and Video Game Industry, at 14.

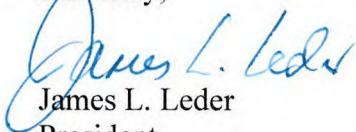
employees here that we would need to support those new projects. Because the development cycle for new video games is approximately two to three years, the impacts of today's cost projections and investment decisions will be felt for many years. Among the jobs that could be impacted by the proposed tariffs are members of the game development studios and R&D teams that ensure ZeniMax's products remain on the cutting edge of innovation. Our R&D teams and game development studios are located in cities across the United States, including Rockville and Hunt Valley, Maryland, and Dallas and Austin, Texas. If demand in the United States falls, we would likely need to consider refocusing efforts in other consumer markets, such as East Asia and Europe. Consumer preferences in some non-U.S. markets differ in significant ways, and the need to tailor new games to the story arcs, artistic styles, and gameplay mechanics that are desired in such markets could require us to shift game development and publishing efforts outside of the United States.

As a result, the tariffs would have the perverse consequence of *harming* rather than *advancing* U.S. high tech innovation.

Given the grave harm that would be caused by the proposed tariffs to U.S. consumers and to developers and publishers like us, we respectfully request that your office remove from the final tariff list the following HTS headings: 9504.50.00, 8526.92.10, and 8543.70.87.

We appreciate your consideration of these comments.

Sincerely,



James L. Leder
President