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**Via Electronic Submission**

**PUBLIC DOCUMENT**

Docket No. USTR-2026-0364

Jennifer Thornton  
General Counsel  
Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

**Re: Docket No. USTR-2026-0364: Request for Comments on the Section 301 Investigation Regarding Vietnam’s Identification as a Priority Foreign Country, 91 Fed. Reg. 33285 (June 3, 2026)**

Ms. Thornton,

The Entertainment Software Association (“ESA”) welcomes the opportunity to provide comments on the investigation by the Office of the U.S. Trade Representative (“USTR”) into Vietnam’s acts, policies, and practices related to intellectual property (“IP”) protection and enforcement. ESA is the U.S. trade association for the video game industry, representing companies that manufacture video game hardware and publish interactive entertainment software for video game consoles, handheld devices, personal computers, and the internet. ESA members are the innovators, creators, publishers, and business leaders reimagining entertainment and transforming how America plays video games. These companies develop not only the world’s most engaging interactive experiences for consumers, but also novel and cutting-edge entertainment technologies, such as virtual, augmented, and mixed reality hardware and software.

ESA appreciates the steps taken by the Administration to address concerns regarding lack of IP protection and enforcement in Vietnam, including in recent negotiations for an Agreement on Reciprocal, Fair, and Balanced Trade. Ensuring sufficient protection and enforcement of IP rights is critical to maintaining U.S. leadership in sectors of strategic importance, including in the development of innovative technologies. As a result of the Administration’s efforts to date, we have witnessed an increased willingness on the part of Vietnamese authorities to cooperate with ESA in cracking down on IP infringement. ESA thanks the Administration for recognizing, in the 2026 Special 301 Report (“Special 301 Report”)<sup>1</sup> and in this investigation, the importance of IP protection and enforcement to the development of cutting-edge software for the video game software industry. Included in the discussion below are key IP enforcement-related actions that the video game industry requests in Vietnam to improve the environment for video games.

In keeping with USTR’s demonstrated support for the creative and innovative U.S. sectors that rely on intellectual property, ESA urges USTR to protect the products that serve as a crucial vehicle for the delivery and

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<sup>1</sup> OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2026 SPECIAL 301 REPORT (Apr. 30, 2026), <https://ustr.gov/sites/default/files/files/Press/Releases/2026/2026%20Special%20301%20Report.pdf>.

enjoyment of video games in the United States. If USTR determines that the cited acts, policies, and practices of Vietnam are actionable under the statute, ESA urges USTR to ensure that any remedial actions against Vietnam prioritize binding commitments that are specific to improving protection and enforcement of IP in the country, and that any other remedies are tailored to strengthen U.S. competitiveness, promote resilient supply chains, and maintain U.S. leadership in sectors of strategic importance. Specifically, remedial actions should accommodate the unique relationship between video games and consoles, ensuring American consumers have unencumbered access to the devices on which new and popular games are played.

Among the many types of devices on which video games may be played, consoles offer a unique combination of affordability and cutting-edge technology, making them an excellent vehicle for U.S. households to experience the latest video game releases—indeed, consoles at times are the *exclusive* access point for players to enjoy new releases.<sup>2</sup> Yet consoles remain the only major consumer device type for game play that have not received accommodations from recent tariffs issued under the International Emergency Economic Powers Act (“IEEPA”) or Section 122 of the Trade Act of 1974 (“Section 122”), or from tariffs that have been proposed this year under Section 301. Extended tariffs on video game consoles, controllers, and accessories materially harm U.S. consumers and significantly impair the U.S. video game industry.<sup>3</sup> These detrimental effects are especially challenging for the game developers located in every state and all of those employed in the wider domestic industry, and threaten the dominant position of the United States in video game software development. Accordingly, we request that video game consoles, controllers, and other game accessories receive accommodations to be protected from any tariffs imposed pursuant to this investigation.<sup>4</sup>

## **I. The Video Game Industry Is a Key Contributor to the U.S. Economy and U.S. Technological Leadership**

The U.S. video game industry is an important contributor to the U.S. economy, having created and supported in 2025 more than 250,000 jobs across the U.S. economy while generating and supporting \$95.8 billion in total economic impacts with wages and benefits totaling \$33.5 billion.<sup>5</sup> In 2025, the U.S. video game industry directly employed over 82,000 workers at thousands of companies across the country, in high-skilled and well-compensated fields including software, retail, video game hardware, game development services, and support functions.<sup>6</sup> The largest sector of the U.S. video game industry is game-related software, accounting for

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<sup>2</sup> Cade Onder, *Take-Two CEO Explains Why GTA 6 Isn't Coming to PC on Day One*, IGN (May 4, 2026), <https://www.ign.com/articles/take-two-ceo-explains-why-gta-6-isnt-coming-to-pc-on-day-one>.

<sup>3</sup> Stephen Totilo, *A nightmare November for video game console sales, as the big three all drop in the U.S.*, GAME FILE (Dec. 17, 2025), <https://www.gamefile.news/p/november-2025-console-sales-drop-black-ops-7>.

<sup>4</sup> Video game consoles are typically imported under U.S. Harmonized Tariff Schedule (“HTSUS”) heading 9504.50.00. The video game industry imports other video game products and accessories under various HTSUS headings, including 8471.70.6000, 8504.40.9550, 8517.62.00, 8518.30.20, 8523.51.0000, 8526.92.10, 8543.70.87, 8543.70.88, and 8544.42.20.

<sup>5</sup> Entertainment Software Association, *Video Games in the 21<sup>st</sup> Century: The 2026 Economic Impact Report*, 1, 5-6 (2026), <https://www.theesa.com/resources/2026-economic-impact-report/>.

<sup>6</sup> *Id.* at 4.

63,248 U.S. employees and over 76% of the total industry employment.<sup>7</sup> Critically, 65% of video game software companies are small businesses (defined as companies operating with less than 10 employees).<sup>8</sup> U.S. game developers rely on access to and adoption of new console technology in domestic and foreign markets to drive continued growth in demand for new titles.

American engineers design next-generation video game consoles and accessories that incorporate the capacity for innovative gaming experiences.<sup>9</sup> ESA console-manufacturing members are significant supporters of the many high-paying U.S. jobs in the video game industry. ESA members Microsoft Corporation (“Microsoft”), Nintendo of America Inc. (“Nintendo”), and Sony Interactive Entertainment LLC (“SIE”), which together supply the world’s three most popular video game consoles, directly employ nearly 20,000 people in the United States. These include jobs in high-value, high-tech R&D roles, hardware, software, and online services engineering positions, as well as creative design and coding jobs in game development studios located across the country.

The industry has grown significantly in recent years, with overall consumer spending on video games in the United States totaling \$59.3 billion in 2024 and \$60.8 billion in 2025, an increase of more than 102% over the past decade.<sup>10</sup> Of this amount, consumers spent less than ten percent—\$5.4 billion—on video game hardware and under \$3 billion on other accessories, such as controllers, headsets, and keyboards.<sup>11</sup> Software products and services—the games themselves—are far and away the most valuable source of revenue in the industry and, correspondingly, drive the vast majority of U.S. jobs in the sector.<sup>12</sup>

Video games designed and developed in the United States are among the most popular around the globe, even as U.S. games have very recently come up against meaningful competition with games from China.<sup>13</sup> The U.S. video game industry develops and publishes approximately one-third of mobile games and two-thirds of console and PC games worldwide, which means that U.S. creativity and innovation are responsible for around \$50 billion—or 25%—of the world’s \$201 billion in sales of video game content.<sup>14</sup> To power this global market for video game technology, console makers collectively invest billions of dollars in R&D in the United

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 15.

<sup>9</sup> See Joe Skrebels, *Xbox and AMD: Advancing the Next Generation of Gaming Together*, XBOX Wire (June 19, 2025), <https://news.xbox.com/en-us/2025/06/19/xbox-amd-next-generation-xbox/> (Discussing the collaboration between Xbox and AMD in their creation of silicone-based technologies for consoles, handhelds, PCs, cloud, and accessories).

<sup>10</sup> Entertainment Software Association, *2025 U.S. Consumer Spending on Video Games Nears Pandemic-Level Peak at \$60.7 Billion, Second-Highest on Record*, (Feb. 11, 2026), <https://www.prnewswire.com/news-releases/2025-us-consumer-spending-on-video-games-nears-pandemic-level-peak-at-60-7-billion-second-highest-on-record-302684591.html>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; Entertainment Software Association, *2026 Economic Impact Report* (2026), (“2026 Economic Impact Report”) <https://www.theesa.com/resources/2026-economic-impact-report/>.

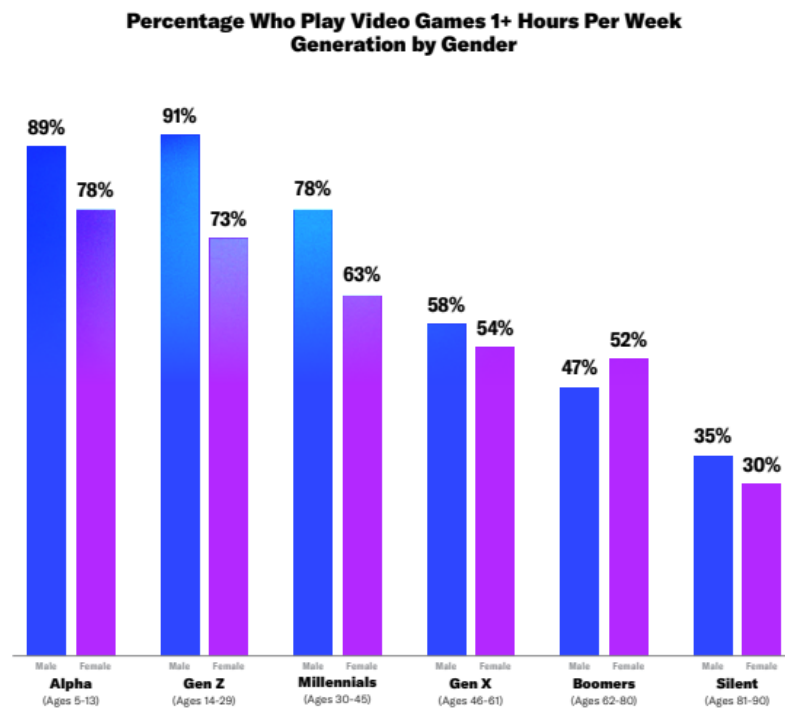
<sup>13</sup> Michiel Buijsman, *Global games revenue cracked \$200 billion in 2025*, Newzoo (June 18, 2026), <https://newzoo.com/resources/blog/global-games-market-q2-2026>.

<sup>14</sup> *Id.*

States, generating U.S. video game innovations that have been deployed for use across a variety of other sectors, such as healthcare, retail, industrial manufacturing, and education, among others.

## II. American Consumers Widely Use Video Games for Social, Educational, and Recreational Purposes.

In addition to its significant economic contributions, the U.S. video game industry plays an important social, educational, and recreational role in the lives of ordinary Americans, both young and old. Video games are one of America's favorite pastimes, and over 212 million Americans from ages 5 to 90 play video games.<sup>15</sup> In total, 67% of the U.S. population reports playing video games at least one hour per week, and 83% of U.S. households have played at least one video game device in the last year.<sup>16</sup>



*ESA, 2026 Essential Facts Report.*<sup>17</sup>

<sup>15</sup> Entertainment Software Association, *Essential Facts About the U.S. Video Game Industry* (2026), 1, 6, <https://www.theesa.com/wp-content/uploads/2026/06/2026-Essential-Facts-Booklet-05-27-26.pdf>.

<sup>16</sup> *Id.* at 6, 15.

<sup>17</sup> *Id.*

More Americans than ever enjoy video games, and 44% of U.S. households play video games on a console.<sup>18</sup> As life-long players become parents and grandparents who play with younger family members, adults make up an increasing share of consumers, with those over 50 accounting for nearly one-third of all video game players.<sup>19</sup> In this way, video games have become an important social platform for Americans who play with families and friends on a regular basis. Indeed, 72% of Americans who play video games do so with others, either online or in person.<sup>20</sup>

### **III. Vietnam Should Continue to Make Strides in Improving the Effectiveness of IP Enforcement.**

ESA appreciates the Administration's efforts to address long-standing concerns of the video game and other copyright sectors regarding IP protection and enforcement in Vietnam in the Special 301 Report and in the present Section 301 investigation. The International Intellectual Property Alliance ("IIPA") discussed these issues in detail as part of its January 28, 2026 submission in USTR's 2026 Special 301 Review.

Since USTR released the Special 301 Report, ESA is aware of the following positive developments related to the enforcement of IP in Vietnam:

- Following ESA's referrals of two Vietnam-based video game piracy sites to regional representatives of the U.S. Department of Justice and Homeland Security Investigations ("HSI"), the two sites have since become inaccessible in at least Vietnam and the United States. Additionally, the government of Vietnam has opened dialogue with the video game industry to address continued action in these cases, as well as to address other known referrals in online infringement cases, as appropriate;
- Vietnamese law enforcement has initiated seven criminal proceedings in cases involving infringement of copyright and related rights, among other administrative and law enforcement actions; and
- Vietnam's Ministry of Science and Technology has issued recommendations for amendments to the Penal Code, improved training and resources for engaging in IP enforcement actions, and other IP-related improvements.

In light of these developments and initial communications with the government of Vietnam, ESA believes additional details from Vietnam's enforcement and regulatory authorities could provide further data that would be highly relevant to the present investigation.

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<sup>18</sup> *Id.* at 15.

<sup>19</sup> *Id.* at 6-7.

<sup>20</sup> *Id.* at 26.

**IV. Any Section 301 Remedy Should Involve Binding Commitments and, if Relevant, Accommodations to Protect Video Game Products from Tariffs.**

In view of Vietnam’s recently intensified focus on the enforcement areas raised in the Special 301 Report, a constructive and meaningful dialogue between the United States and the government of Vietnam to establish binding commitments for both immediate and sustained action is the appropriate mechanism to address these concerns.

As USTR considers whether and how to craft remedies in the present investigation, and in keeping with the Administration’s demonstrated support as exemplified in the Special 301 Report for the creative and innovative U.S. sectors that rely on intellectual property, ESA urges USTR to maintain its support for this sector by protecting the products that serve as a crucial vehicle for the delivery and enjoyment of video games in the United States. Given the importance of the video game industry to the U.S. economy and to the lives of everyday Americans, ESA respectfully requests that USTR provide accommodations for video game consoles, controllers, and other game accessories to be protected from any Section 301 tariffs imposed on U.S. imports from Vietnam as part of this investigation.

The video game industry is uniquely vulnerable to new tariffs under current trade rules. It is true that Americans play video games across a wide variety of devices, including consoles, mobile devices, PCs, and VR headsets, and some of these devices have been able to enter the United States tariff-free in the past year. However, video game consoles have been subject to tariffs continuously since emergency tariffs went into effect in April 2025.<sup>21</sup> This disadvantage borne by consoles turns the market ecosystem for many games upside down.

More than any other device, video game consoles have long provided a unique combination of affordability and cutting-edge technology, offering the average U.S. household a secure and high-tech means to experience the latest video game releases, whether by download, disk, cartridge, or subscription. The fact that video game publishers have reason to grant exclusive console access to major new releases speaks to the importance of these devices to the “core” game play experience.<sup>22</sup> The demand for new games also drives the uptake of newly integrated hardware technology often featured in new-release games, which in turn funds R&D into further advancements in the field.

Restrictions on the availability of the products necessary to access video games, such as through tariffs, not only harm U.S. consumers and the studios that use these products to create new games but also threaten U.S. market leadership in software and game development. Tariffs on these products would fall on a market that is unusually price-sensitive: consoles are often sold at razor-thin margins, or even at a loss, so households can afford the hardware needed to access games. The advanced technology found in video game hardware and accessories already represents a significant cost for the average consumer. Retailers likewise have limited ability to absorb added costs. As a result, additional costs are unavoidably passed along to

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<sup>21</sup> Unlike other consumer electronics products, video game consoles (HTSUS heading 9504.50.00) do not appear in the Annexes that itemized certain product codes not to be covered by IEEPA or Section 122 tariffs.

<sup>22</sup> Cade Onder, *Take-Two CEO Explains Why GTA 6 Isn't Coming to PC on Day One*, IGN (May 4, 2026), <https://www.ign.com/articles/take-two-ceo-explains-why-gta-6-isnt-coming-to-pc-on-day-one>.

ordinary Americans, and even minor cost increases could place these products out of reach for many consumers.

Higher console and accessory prices also weaken the broader U.S. video game ecosystem. Affordable hardware expands the market for games made by U.S. publishers and independent developers, accelerates adoption of new technologies, and supports continued investment in software, creative talent, and R&D. By raising prices and suppressing demand, tariffs reduce sales across physical, digital, and subscription channels; slow the uptake of next-generation hardware; and disadvantage small and medium-sized U.S. studios that depend on a large installed base of consumers. In short, relief from tariffs on video game consoles, controllers, and accessories would increase productivity, innovation, and the competitiveness of the U.S. video game industry, opening opportunities from increased sales and jobs among video game developers, producers, publishers, and retailers.

**V. USTR Has in the Past Excluded Video Game Consoles, Controllers, and Accessories from Section 301 Remedies.**

In 2019, USTR considered imposing tariffs of 25 percent on a range of imports from China, as part of the agency's Section 301 investigation into China's technology transfer practices. The list of products facing such tariffs was known as "List 4B" and included various consumer electronics, including video game consoles, controllers, and accessories. In comments submitted to USTR regarding this proposed action, ESA emphasized the negative effects that List 4B tariffs would have on American consumers and businesses. ESA also underscored that the imposition of such tariffs would not be effective in changing the underlying Chinese practices that USTR was targeting with its Section 301 investigation. Instead, such tariffs threatened to disproportionately harm American consumers and workers, and to undermine the U.S. industry's position as a dominant leader in the development of emerging technologies for interactive and immersive entertainment. After its consideration of tariffs in 2019, USTR ultimately suspended the List 4B tariffs indefinitely, even before the tariffs took effect. This was the right decision for U.S. consumers and businesses then, and the same considerations are relevant here.

In particular, the imposition of tariffs on video game hardware would not be effective in changing the underlying practices that USTR is seeking to target under Section 301. Imposing tariffs on these specific products will only harm American consumers and American industry by making the United States a less competitive and less attractive market for the latest video games. Specifically, new tariffs on video game consoles, controllers, and accessories would adversely impact the welfare of American consumers, by making a pastime enjoyed by the majority of Americans—that is, 67% of the U.S. population—more expensive. Such tariffs will also result in lost U.S. sales and jobs, and cripple innovation in the U.S. video game sector. These costs, meanwhile, would be imposed on a dynamic, rapidly shifting product category for which the United States is a global leader.

For these reasons, USTR should exempt video game consoles, controllers, and accessories from any tariffs imposed through this investigation.

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ESA thanks USTR for the opportunity to share our comments on the Section 301 investigation into Vietnam's acts, policies, and practices related to IP protection and enforcement. ESA supports the

Administration's objective to achieve meaningful changes in the practices under review. The most effective tools to do so will be those that create incentives for foreign trading partners to adjust harmful behaviors without causing lasting harm to U.S. industrial leadership, innovation, or consumers. Any trade remedies against Vietnam should include accommodations to protect video game consoles, controllers, and accessories from Section 301 remedies, such as tariffs, resulting from this investigation. We welcome opportunities for continued engagement and are happy to answer any questions you have.

Respectfully submitted,

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