

June 13, 2012

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CARLOS MOORE, PRESIDENT

VIA ELECTRONIC FILING

The Honorable Lisa R. Barton
Acting Secretary
U.S. INTERNATIONAL TRADE COMMISSION
500 E Street, SW, Room 112-F
Washington, DC 20436

Re: Certain Gaming and Entertainment Consoles, Related
Software, and Components Thereof, Inv. No. 337-TA-752

Dear Acting Secretary Barton:

Public Interest Comments in the above referenced investigation were filed on June 8, 2012, on behalf of International Business Machines Corp. ("IBM") in the above referenced investigation (Document ID No. 482491). This original filing erroneously contained a confidential legend, but the document does not contain any Confidential Business Information requiring protection under the protective order.

Please find attached for filing the corrected Public Interest Comments on behalf of IBM. The ONLY change to these comments is the removal of the confidential legend.

Respectfully submitted,

/s/ V. James Adduci, II

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June 8, 2012

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The Honorable Lisa R. Barton
Acting Secretary
U.S. INTERNATIONAL TRADE COMMISSION
500 E Street, SW, Room 112-F
Washington, DC 20436

Re: Certain Gaming and Entertainment Consoles, Related
Software, and Components Thereof, Inv. No. 337-TA-752

Dear Acting Secretary Barton:

On behalf of our client, third-party International Business Machines Corp. ("IBM"), we hereby submit the following letter in response to the Commission's May 15, 2012, Federal Register notice soliciting comments on the public interest regarding potential remedial orders in the above-captioned investigation.

An exclusion order directed to the accused products in this investigation—Microsoft Xbox 360 gaming consoles and accessories—would be detrimental to IBM. These popular gaming consoles are manufactured by Microsoft and contain components developed by, and a limited portion of which are manufactured by, IBM in the United States. IBM has made substantial investments in the United States in the components it supplies to Microsoft. IBM will therefore suffer commercial harm if the Xbox 360 is excluded from importation into the United States.

While the domestic-industry requirement serves to prevent this unwanted result in most cases, in this case it does not. Motorola's domestic industry relating to gaming devices is based largely on licensing, and Motorola does not manufacture a product that competes with the Xbox 360. In this investigation, the presiding ALJ found that Motorola's conduct with respect to its offers to license its patents to Microsoft were misleading and demonstrate "that Motorola was not interested in good faith negotiations. . . ." ID at 302-03. An exclusion order here will serve to harm IBM, a domestic technology company and would frustrate the public interest by allowing Motorola to benefit from its refusal to negotiate with Microsoft in good faith.

The Honorable Lisa R. Barton
June 8, 2012
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For these reasons, IBM urges the Commission to carefully consider the public interest in determining whether to issue remedial orders in the instant investigation. Microsoft, IBM, and consumers should not be harmed by an importation bar.

Respectfully submitted,

/s/ V. James Adduci, II

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **LETTER TO ACTING SECRETARY BARTON ENCLOSING THE CORRECTED INTERNATIONAL BUSINESS MACHINES CORP.'S RESPONSE TO THE COMMISSION'S REQUEST FOR SUBMISSION ON THE PUBLIC INTEREST** was served to the parties, in the manner indicated below, this 13th day of June 2012:

The Honorable Lisa R. Barton
Acting Secretary
U.S. INTERNATIONAL TRADE COMMISSION
500 E Street, S.W., Room 112-A
Washington, DC 20436

VIA ELECTRONIC FILING
 VIA HAND DELIVERY

The Honorable David P. Shaw
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/s/ Pat Cotton, Paralegal

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