

March 23, 2023

Ambassador Katherine Tai
U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

Secretary Gina Raimondo
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Ambassador Tai and Secretary Raimondo:

We count on the Office of the U.S. Trade Representative and U.S. Department of Commerce to ensure a level playing field for our workers and companies, including holding our allies accountable when unfair trade practices violate our trade agreements and discriminate against U.S. exports. Today, we write to bring to your attention the imbalanced Japanese video game market, which we are concerned may be a result of a discriminatory trade practice that could violate the spirit of the U.S.-Japan Digital Trade Agreement. We also will be focused on this issue as the Biden Administration continues to negotiate the Indo-Pacific Economic Framework (IPEF).

Japan allows foreign gaming companies to sell to its market, but U.S. companies have never gained a foothold. Microsoft debuted its Xbox in Japan in 2002, and despite 20 years of investment, still has a negligible two percent share of the high-end console market. Our understanding is that the Japanese government tolerates a range of exclusionary conduct by their domestic companies that may violate Japan's antitrust laws, and that this inaction by the Japanese government harms the ability of U.S. companies to compete in the country. We understand that Sony – which holds 98 percent of the market – pays third-party game publishers *not* to make their content available on Xbox and systematically negotiates exclusivity arrangements that keep the most popular games in Japan off Xbox.

The Japanese government's effective policy of non-prosecution when it comes to Sony appears to be a serious barrier to U.S. exports, with real impacts for Microsoft and the many U.S. game developers and publishers that sell globally but see their earnings in Japan depressed by these practices. Such policies can distort trade every bit as much as high tariffs or non-tariff barriers like discriminatory licensing practices, with the same result of allowing a domestic incumbent to protect its market share from foreign competitors. Such policies also can distort trade in the United States and third countries by providing monopoly rents at home that can be leveraged for competition abroad.

In the U.S.-Japan Digital Trade Agreement, Japan committed to provide non-discriminatory treatment to U.S. digital products, which includes computer programs and other digitally encoded products like console games. Turning a blind eye to this blatantly anticompetitive conduct may constitute discrimination against competing U.S. digital products.

USTR should seek consultations with Japan under the Agreement to address concerns about unequal application of its antitrust law and the resulting discrimination against U.S. companies. In addition, USTR should consider identifying barriers to access to the Japanese gaming market in the forthcoming 2023 National Trade Estimate.

These issues in Japan's gaming market also arise against the backdrop of USTR and Commerce's ongoing Indo-Pacific Economic Framework (IPEF) negotiations with Japan and twelve other countries. Japan is and will remain a key ally and trading partner of the United States, and it is an essential participant in the IPEF negotiations. These negotiations can only be meaningful if the Administration addresses issues that are preventing fair competition for U.S. workers and companies in our allies' markets.

We stand ready to work with you and look forward to receiving a briefing on USTR and Commerce's progress in raising this issue with Japan. Thank you for your time and attention to this important issue.

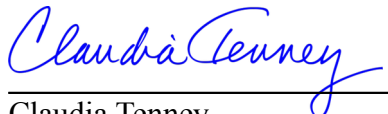
Sincerely,



Carol D. Miller
Member of Congress



Mike Carey
Member of Congress



Claudia Tenney
Member of Congress



Brian K. Fitzpatrick
Member of Congress